



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This review hearing was convened in response to an application for dispute resolution made on January 19, 2018 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The original decision dated August 24, 2018 (the “Original Decision”) finds that in addition to being entitled to monetary amounts the Landlord must pay the Tenant double the security deposit. This amount was set off against the monetary entitlement of the Landlord in the Original Decision. The Review Consideration Decision dated September 25, 2018 (the “Review Decision”) determined that the Landlord was entitled to a review hearing and the Landlord confirms that the only issue to be determined at this review hearing is whether the Tenant’s right to return of the security deposit was extinguished at move-out.

The Tenant did not attend the review hearing. The Review Decision ordered the Landlord to serve the Tenant with the Review Decision and notice of review hearing within 3 days receipt of the Review Decision. I accept the Landlord’s evidence that they received the Review Decision on September 28, 2018 and served it and the notice of

review hearing to the Tenant by registered mail on September 28, 2018 as ordered. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Review Decision and notice of review hearing on October 3, 2018. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Was the Tenant's right to return of the security deposit extinguished at move-out?
Is the Original Decision confirmed or set aside and replaced?

Background and Evidence

The Landlord states that the tenancy started on November 1, 2016 and ended on December 31, 2018. Rent of \$1,550.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$775.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenant. On December 11, 2017 the Tenant gave notice to end the tenancy for December 31, 2017 and on the same notice the Tenant provided its forwarding address.

The Original Decision sets out the following evidence of the Landlord:

The Tenant moved out of the unit on December 31, 2017 and attended the move-out inspection on that date. The Tenant did not agree with the Landlord's assessment of damages and refused to sign the report. The Landlord did not indicate the state of the unit other than to set out the costs being claimed in the application. The Tenant was provided a copy of the inspection report on December 31, 2017.

The Landlord now gives the following evidence:

The Landlord arranged for a move-out inspection to be conducted with the Tenant for 1:00 p.m. on January 4, 2018. The Tenant did not appear at that time

so the Landlord posted another two offers for an inspection for 3:00 p.m. and 5:00 p.m. on January 4, 2018. The Tenant did not show so the Landlord completed the inspection and report.

The Landlord states that he was not the person who made the offers for the inspection, who attended the unit on the inspection times, or who completed the inspection report. The Landlord who appears at this hearing is not the person who appeared and gave evidence for the Landlord at the original hearing. The Landlord states that he does not know why different evidence was given at the original hearing and cannot clarify this previous evidence.

Analysis

Section 36(1) of the Act provides that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has provided two opportunities for a move-out inspection and the tenant has not participated on either occasion. The Landlord's evidence at this review hearing differs from the Landlord's evidence at the original hearing. Most significantly, the Landlord's evidence at the original hearing was that the Tenant was given a copy of the move-out report on December 31, 2018. This is in contradiction to the current evidence that the move-out report was not completed until January 4, 2018. As a result of this conflicting evidence and considering that the Landlord who gave evidence at this review hearing was not present or involved with the move-out inspection process and was not the person who gave the Landlord's evidence at the original hearing, I consider that the Landlord's evidence at this review hearing is not reliable and I therefore accept the original evidence and findings that the Tenant did attend the inspection. As such I find that the Tenant's right to the return of the security deposit has not been extinguished.

I confirm the Original Decision and Monetary Order in its entirety.

Conclusion

The Original Decision and Monetary Order is confirmed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 8, 2018

Residential Tenancy Branch