Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on November 18, 2019 (the "Application"). The Tenants applied for return of double the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing with T.H., N.S. and G.N. G.N. advised that she is the executor of the estate of Tenant R.N. The Landlord appeared at the hearing.

The Application named the Tenants, T.H. and N.S. as tenants. At the hearing, the parties agreed T.H. and N.S. were occupants of the rental unit and not tenants. Given this, I have removed T.H. and N.S. from the Application which is reflected in the style of cause. Both T.H. and N.S. participated in the conference call.

I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit?

2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The agreement was between the Landlord, Tenants and A.C. as a tenant. The tenancy started August 01, 2016 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. Rent was $3,600.00 per month due on the first day of each month. The tenants paid a $1,800.00 security deposit.

The parties agreed the tenancy ended October 01, 2019.

The parties agreed the Tenants provided a forwarding address on the move-out Condition Inspection Report (CIR) on September 30, 2019.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy.

The Landlord testified that the Tenants did agree to him keeping the security deposit and pointed to section Z (2) on page three of the CIR which states:

> I T.H. agree to the following deductions from my security and/or pet damage deposit:
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> Security Deposit: $1800 Pet Damage Deposit: _____
>
> Date: 30/09/19 Signature of Tenant: [signed by T.H.]

The Tenant, Occupants and G.N. made the following submissions in relation to T.H. agreeing to the Landlord keeping the security deposit.

T.H. signed the wrong spot on the CIR. T.H. signed the CIR thinking it just meant the parties were parting ways. T.H. did not read section Z (2) and did not realize what he was signing.

T.H. did not sign section Z (4) of the CIR and therefore the CIR is not complete and is not valid. G.N. referred to the CIR instructions page. Also, the CIR was not complete when T.H. signed it because he did not indicate in section Z (1) whether he agreed or disagreed with the CIR.

T.H. submitted that he was not appointed as agent for the Tenants to do the move-out inspection. T.H. then acknowledged he had a discussion with the Tenant or G.N. and it was decided that he would attend the move-out inspection. G.N. then testified that Tenant R.N. had passed away and they sent T.H. in the place of the Tenants to do the move-out inspection.

G.N. testified that she had communications with the Landlord about whether he was keeping the security deposit and the Landlord never made it clear that he was keeping it until October 28th.

N.S. testified that someone for the Tenants and the Landlord did a move-in inspection and completed the CIR on July 01, 2015.

The Tenant, Occupants and G.N. did not point to any section of the *Residential Tenancy Act* (the "*Act*"), *Residential Tenancy Regulation* (the "*Regulations*") or Policy Guidelines they were relying on to support the Application although asked to do so and given an opportunity to do so.

The Landlord testified as follows. He could not have forced T.H. to sign section Z (4) of the CIR. He had no control over what T.H. did and did not complete on the CIR. T.H. signed section Z. T.H. completed section Z (1). He held the full deposit. He did not apply to the RTB to keep the deposit. He agrees that he did a move-in inspection and completed the CIR on July 01, 2015 with someone for the Tenants.

The Tenants submitted the CIR completed on move-in and move-out.

Analysis

Pursuant to rule 6.6. of the Rules of Procedure, it is the Tenants as applicants who have the onus to prove the claim.

Section 38 of the *Act* states:

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1)…or 36 (1)…

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant…

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2)…or 36 (2)…

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I am satisfied based on the testimony of both parties and the CIR that someone for the Tenants participated in the move-in and move-out inspections and therefore the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

Based on the CIR, I find T.H. signed section Z (2) stating that the Landlord could keep the full security deposit. This is an agreement in writing made at the end of the tenancy. I find section 38(4)(a) of the *Act* applies.

Pursuant to section 38(5) of the *Act*, section 38(4)(a) of the *Act* does not apply if the Landlord's rights in relation to the security deposit have been extinguished under sections 24 or 36 of the *Act*. These sections state:

> 24 (2) The right of a landlord to claim against a security deposit…for damage to residential property is extinguished if the landlord
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> (a) does not comply with section 23 (3) [2 opportunities for inspection],
>
> (b) having complied with section 23 (3), does not participate on either occasion, or
>
> (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
>
> (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit…for damage to residential property is extinguished if the landlord
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> (a) does not comply with section 35 (2) [2 opportunities for inspection],
>
> (b) having complied with section 35 (2), does not participate on either occasion, or
>
> (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The requirement that the Landlord offer the Tenants two opportunities to do the move-in and move-out inspections does not apply because the Tenants participated in the inspections.

Based on the testimony of both parties and the CIR, I am satisfied the Landlord participated in the move-in and move-out inspections.

Based on the CIR, I am satisfied the Landlord completed it on move-in and move-out as it is filled out indicating the condition of the rental unit at the beginning and end of the tenancy. Further, I am not satisfied based on the evidence or submissions that the Landlord did not complete the move-in or move-out CIR as the Tenants did not raise this as an issue. The Tenants argued that the CIR was not complete because T.H. did not complete section Z (1) or (4).

I am satisfied the Tenants were given a copy of the move-in and move-out CIR as they submitted a copy of it as evidence for the hearing. Further, I am not satisfied based on the evidence or submissions that the Tenants were not given a copy as required as the Tenants did not raise this as an issue.

I am not satisfied based on the evidence or submissions that the Landlord extinguished his rights in relation to the security deposit under sections 24 or 36 of the *Act*. I am not satisfied section 38(5) of the *Act* applies. Therefore, I continue to be satisfied that section 38(4)(a) of the *Act* applies.

The Landlord was not required to comply with section 38(1) of the *Act* because section 38(4)(a) of the *Act* is an exception to section 38(1) of the *Act* and section 38(4)(a) of the *Act* applies here.

I am not satisfied based on the evidence or submissions that the Tenants are entitled to return of the security deposit or return of double the security deposit. Pursuant to section 38(4)(a) of the *Act*, the Landlord is entitled to keep the security deposit. The Landlord has not failed to comply with section 38(1) of the *Act* as explained above and therefore section 38(6) of the *Act* does not apply and the Tenants are not entitled to return of double the security deposit.

I find the following about the arguments of the Tenant, Occupants and G.N.

It is not sufficient to argue that T.H. signed the wrong spot on the CIR or was not aware of what he was signing. Parties are expected to read the documents they sign in relation to tenancies. The relevant section of the CIR is brief, easy to read and clear. The Tenants are not relieved of the consequences that flow from T.H. signing section Z (2) of the CIR on the basis that T.H. signed the wrong spot or did not read the section.

I acknowledge that T.H. did not complete section Z (1) or sign section Z (4) of the CIR; however, this does not change the analysis under the relevant sections of the *Act*. I find from this that T.H. did not complete the CIR. I agree with the Landlord that he could not

force T.H. to complete the CIR. I am not satisfied that this affects whether the Landlord's rights in relation to the security deposit were extinguished under sections 24 or 36 of the *Act*. Further, this does not change that the Landlord is entitled to keep the security deposit under section 38(4)(a) of the *Act*. All that section 38(4)(a) of the *Act* requires is an agreement in writing made at the end of the tenancy. The agreement does not have to be on a CIR, it simply has to be in writing. Whether T.H. completed the CIR or not does not impact section 38(4)(a) of the *Act*.

I do not accept that T.H. was not appointed as agent for the Tenants to do the move-out inspection. T.H. acknowledged having a discussion with the Tenant or G.N. and agreeing he would attend the inspection. G.N. testified that they sent T.H. to do the inspection in the place of the Tenants. I find T.H. was sent by the Tenant or G.N. to do the inspection for the Tenants and find T.H. was therefore an agent for the Tenants. Sending an agent to do the move-out inspection was permitted by section 15 of the *Regulations.*

The argument that the Landlord did not tell G.N. he was keeping the security deposit does not change the analysis under the *Act*. Pursuant to section 38(4)(a) of the *Act*, the Landlord was and is entitled to keep the security deposit. This is the issue before me. The Landlord did not need to tell the Tenant or G.N. he was keeping the security deposit. He had authority under the *Act* to do so.

Given the above, I find the Landlord was and is entitled to keep the security deposit pursuant to section 38(4)(a) of the *Act*. The Tenants are not entitled to return of the security deposit.

Given the Tenants were not successful in the Application, I decline to award them reimbursement for the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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: May 06, 2020

Residential Tenancy Branch