Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFL, MNSDB-DRT, FFT

Introduction

In the first application the landlord seeks a monetary award for cleaning and repair to the premises after the end of the tenancy.

In the second application the tenants seek recover of security deposit and pet damage deposit money totalling $1750.00, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the "*RTA*").

The tenants acknowledged owing the landlord a total of $223.94 for a water-damaged baseboard, an electricity charge, a mattress cover, and Ikea bowl and a light fixture globe. In dispute are the landlord's claims for wall marks and dents, a bedroom door scratch and move-out cleanup.

The landlord has filed extensive photographic and related evidence in support of his claim. The tenants deny having received the landlord's evidence. The landlord indicates he sent it to the forwarding address provided by the tenants (in another city). The tracking number provided by the landlord for that mail (shown on cover page of this decision) appears to show a package mailed and delivered to an address in the city in which the rental unit is located and not to the city described in the forward address provided by the tenants.

In these circumstances it was agreed the landlord would withdraw his application and that he had leave to re-apply if he wished.

Since there is then no outstanding claim against the deposit money, the tenants are entitled to have the $655.00 remainder of it returned to them. I consider it fair that the returned amount be adjusted for the $223.94 amount admitted to by the tenants.

Issue(s) to be Decided

The sole remaining question is whether or not the tenants are entitled to the deposit doubling penalty imposed by s. 38 of the *RTA*. Section 38 provides that once a tenancy has ended, and once the tenants have provided the landlord with a forwarding address in writing, the landlord has 15 days to either repay the deposit money or make an application to keep it. Failure to either repay or make that application within that 15 day period caused the landlord to be liable to the tenants for double the deposit money.

Background, Evidence and Analysis

In this case the landlord clearly made his application within the 15 day period. However, the tenants point out, the landlord failed to inspect and prepare either a move-in condition report or inspect and prepare a move-out condition report.

Sections 24(2) and 36(2) of the *RTA* state that if a landlord fails conduct these inspections and make a report, “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished ….”

A review of the *RTA* shows that “damage” and “clean” are treated as two separate things (see for example s. 37(2) which obliges a tenant to leave a rental unit “reasonably clean, and undamaged ….”

It follows that a provision extinguishing a landlord’s right to claim against deposit money for “damage” does not extinguish his right to claim against deposit money for “cleaning” and thus to continue to hold deposit money pending the hearing of his claim for cleaning costs.

In this case the landlord has claimed the cost of cleaning the rental unit. Indeed it is major unresolved issue between the parties. For the foregoing reasons I conclude that the double penalty does not apply to these circumstances.

Conclusion

The tenants are entitled to recover the $655.00 remainder of their deposit money, less $223.94 agreed to be owed to the landlord, plus the $100.00 filing fee for this application. They will have a monetary order against the landlord in the amount of $531.06.

The landlord's claim is withdrawn with 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 *Residential Tenancy Act*.

Dated: November 10, 2020

Residential Tenancy Branch