



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: MNR, MNDC, MNSD, & FF

Introduction:

This hearing dealt with cross applications by the parties. The tenants are seeking the return of double their security deposit plus interest. The landlords are seeking a monetary claim due to non-payment of rent and loss or damage suffered due to breach of contract. The landlords are also seeking to retain the tenants' security deposit plus interest in partial satisfaction of this claim.

Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Have the landlords complied with the *Act* in retaining the tenants' security deposit plus interest? Have the landlords established a monetary claim related to non-payment of rent and due to damage to the rental unit?

Background and Evidence:

This tenancy began on March 1, 2007 for the monthly rent of \$1,800.00 and a security deposit of \$500.00. The tenancy was a fixed term lease for two years and six months with an option to renew the lease for an additional year. The tenancy ended on August 31, 2008. A move-in condition inspection report of the rental unit was completed on February 28, 2007.

Evidence from the Tenants:

The tenants are seeking the return of double their security deposit plus interest as they alleged the landlord failed to return the deposit within 15 days of the end of the tenancy and after the landlord received their forwarding address. The tenants also alleged that the landlords failed to conduct a move-out condition inspection at the end of the tenancy and therefore lost the right to retain the security deposit. The tenants submitted that their forwarding address was provided on September 2, 2008.

The tenants stated that they requested to end their tenancy on July 30, 2008 by e-mail. They submit that the landlords would not allow them to sublet the rental unit or find new, suitable tenants. Although the landlords requested that the tenants come up with some figure related to ending the tenancy early, the tenants submit that the landlords never pursued this request or made any indication that there was going to be damages for any loss to the landlords as a result of the tenancy ending.

The tenants only acknowledge damage to a coffee table in the rental unit and had offered the landlords \$100.00 in compensation for this damage.

Evidence of the Landlords:

The landlords claim that the tenants failed to return the rental unit to its condition at the time the tenancy began. The landlords stated that they did arrive on August 31, 2008 to conduct the move-out inspection; however, acknowledged in the hearing that they did not arrange an appointment with the tenants.

The landlords are seeking compensation for the following damages to the rental unit:

- Replacement of kitchen gable over fridge: \$75.00;
- Repair holes in walls of living room: \$184.09;
- Replacement of coffee table and end table: \$336.00;
- Reconnecting wires to stereo system: \$50.00;
- Repair to damaged front lawn: \$127.90; and
- Outstanding pest control bill: \$186.76

The landlords stated that the tenants had indicated that they would complete the outstanding work to the rental unit, such as the kitchen gable but did complete this work. The landlords submit that the rental unit as remained empty to complete these repairs throughout September, October and November 2008. Otherwise the landlords acknowledged that the rental unit was left clean. The landlords submitted that the earliest possible time to locate new tenants was January 1, 2009.

The landlords are also seeking loss of rental income due to the tenants breaching the fixed term tenancy ending effective August 29, 2009. The landlords acknowledged that they would not allow the tenants to sublease the rental unit, but argue that they clearly indicated that there would be damages resulting from the tenants breaking the lease agreement. The landlords submit that the breach of the fixed term tenancy has caused damages for the sum of \$9,000.00 on the basis that they rented the unit at a loss of \$300.00 per month from January 1, 2009 to March 2009 and at a loss of \$200.00 from April 2009 to the end of August 2009. This sum also includes the loss of rent from September to December 2008 at \$1,800.00.

The landlords also seek travel expenses for the sum of \$300.00 to conduct the move-out inspection.

Analysis:

I accept the tenants' application for the return of double their security deposit plus interest. I am satisfied that the landlords failed to make reasonable arrangements to conduct a move-out condition inspection of the rental unit at the end of the tenancy and I am satisfied that the landlords failed to return the tenants' security deposit or file an application to retain the security deposit within 15 days of receiving the tenants' forwarding address.

As a result I find that the tenants are entitled to damages for the sum of **\$1,063.94** including the recovering of the \$50.00 filling fee paid for this application.

Regarding the landlords' application I find several aspects of the landlords claim to be vague and unsupportable. For example, the landlords have claimed that it took four months to complete the repairs to the rental unit. I find that to be highly unlikely given the very minor nature of the landlords' claims. The landlords have failed to demonstrate that they took reasonable steps to mitigate their losses. I also reject that it took this long to evaluate and make the repairs on the basis that the landlords live a great distance from the rental unit. This was a choice the landlords made and I do not accept this as a reasonable argument for how long it took to complete these minor repairs. I also reject the landlords' claim for travel expenses as this is an expense of being a landlord away from the rental unit.

I am also troubled by the landlords' failure to quantify what damage they would suffer due to the tenants' choice to end the fixed term tenancy. I accept the evidence that the landlords asked that the tenants evaluate their loss; however, the landlords never indicated to the tenants what damages they would be seeking until months after the tenancy ended. I find this unreasonable. The landlords had a duty to clearly express to the tenants the damages they would claim due to the tenants ending the tenancy early. I also note that the tenancy agreement failed to clearly express what the damages would be as a result of the tenants breaching the contract. I am also concerned about the landlords denying the tenants the opportunity to find suitable subtenants or new tenants in an effort to mitigate both their losses.

I find that the landlords have failed to properly express their claim for damages and have failed to mitigate their losses. I reject the landlords claim for loss of rental income of \$9,000.00. Given the landlords failure to quickly address the minor repairs in the rental unit and their failure to provide the tenants the opportunity to sub-lease the rental unit I find that the landlords are reasonably compensated for the breach of the tenancy agreement by the sum of \$1,800.00 or one months rent.

I accept the landlords claim for the cost to reinstall the kitchen gable for \$75.00 and the recovery of the pest control bill of \$186.76 as these issues were not disputed. I also grant the landlords \$100.00 for damage to their coffee table and end table. I do not find that given the age of these pieces of furniture that any further compensation is warranted. As the articles are approximately 20 years old they have no further value.

I reject the landlords claim for reconnecting the stereo system and for repairs to the holes in the walls in the living room. I find that the holes in the living room were reasonable wear and tear. I also find that the reconnection of the stereo system was not the responsibility of the tenants as this item was owned by the landlords and they had the reasonable knowledge to reconnect it themselves. Finally I find that the evidence respecting the lawn is not sufficient to find that the landlords have proven this damage. As pointed out by the tenants the lawn was covered originally in snow at the start of the tenancy and it was the end of the summer at the end of the tenancy. I am satisfied that through normal weathering and renewal in the spring that there is no significant damage to the lawn.

I find that the landlords have established damages in the sum of **\$2,211.76** including half of the \$100.00 filling fee paid by the landlord for this application. I am only granted the landlords half of their filling fee as I find that the majority of their claim, resulting in the higher filling fee, was not supported by their application.

Conclusion:

I have granted both parties applications in part. Pursuant to section 72 of the *Act* I have offset the established monetary claim of the landlords by the established monetary claim of the tenants. I grant the landlords a monetary Order for the remaining balance owed to them of **\$1,147.85**.

Dated February 04, 2009.

Dispute Resolution Officer