Dispute Resolution Services

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

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an application from the tenants for a monetary order in the amount of one month's rent, cost to replace a "stolen" drill, double the return of the security deposit, and recovery of the filing fee for this application. Both parties and one witness for the landlord participated in the hearing and each gave affirmed testimony.

Issue to be Decided

- Whether the tenants are entitled to a monetary order under the *Act*

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on April 1, 2008. Rent in the amount of $500.00 was payable in advance on the first day of each month, and a security deposit of $250.00 was collected at the start of tenancy. A move-in condition inspection report was completed on March 29, 2008.

By way of unsigned letter to the landlord dated November 8, 2008, the tenants informed the landlord of their intention to vacate the unit "as of Dec.1/08 due to unsatisfactory living conditions."

Following this, by unsigned letter dated November 12, 2008, the tenants claimed entitlement to full return of their security deposit. Further, in this letter the tenants claimed that mould in the unit had damaged some of their possessions and had led them to putting certain items in storage, leading them also to make a claim for reimbursement of rent for the month of November. In this letter the tenants also

claimed entitlement to reimbursement in the amount of $199.99 for a drill that had allegedly been stolen by an employee of the landlord's.

A move-out condition inspection report was completed on December 3, 2008.

Subsequently, by unsigned letter dated December 18, 2008, the tenants once again set out their claim to reimbursement of the security deposit, reimbursement of one month's rent and reimbursement of the cost of the missing drill. After vacating the unit, on a date which was unable to be confirmed, the tenants also notified the landlord of their forwarding address by way of voice mail message.

The landlord declined to repay the security deposit or reimburse the tenants in any other manner, claiming that repairs were required for damage in the unit, the costs of which were not even entirely covered by the amount of the security deposit. The landlord's position in this matter led the tenants to file an application for dispute resolution in order to seek a monetary order for costs, as detailed above, in the total amount of $1,250.00.

Analysis

Based on the documentary evidence and testimony of the parties, my understanding is that monthly rent was paid by the tenants in exchange for use of both, the manufactured home site and the manufactured home itself. In this regard, section 4(a) of the *Manufactured Home Park Tenancy Act* states:

> 4) This Act does not apply with respect to any of the following:
>
> > (a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant;

In the result, notwithstanding that the parties signed a "Manufactured Home Site Tenancy Agreement," I am of the view that the provisions of the *Residential Tenancy Act* apply in this case, and not the provisions of the *Manufactured Home Park Tenancy Act*. This is important to note in relation to security deposits, as section 17(2) of the *Manufactured Home Park Tenancy Act* provides as follows:

> 17(2) A landlord must not require or accept a security deposit in respect of a manufactured home site tenancy.

On the other hand, the *Residential Tenancy Act* does provide for the payment of security deposits and states:

> 17) A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

As to ending a tenancy, section 45 of the *Act* speaks to **Tenant's notice**. In particular, section 45(1)(a)(b) states:

> 45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice, and
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> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

By alleging that there were "unsatisfactory living conditions" in the unit, the tenants imply that the landlord has failed to comply with a material term of the tenancy agreement." Related to this and the ending of a tenancy by tenants, section 45(3) of the *Act* provides:

> 45(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives notice.

There is no evidence before me of the tenants having brought any of their concerns about the condition of the unit to the attention of the landlord in writing.

For the reference of the parties, further to the above, section 52 of the *Act* speaks to **Form and content of notice to end tenancy.** In part, this section of the *Act* requires that the notice "be signed and dated by the landlord or tenant giving the notice."

After considering the documentary evidence and testimony of the parties, I am satisfied that the tenants did not comply fully with the statutory provisions set out in either section 45 or 52 of the *Act* where it concerns ending the tenancy. In the result, I dismiss the tenants' claim for reimbursement of rent paid for the month of November 2008.

Where it concerns return of the security deposit, section 38(1) of the *Act* provides:

> 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,
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> the landlord must do one of the following:
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> (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;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In the circumstances of this dispute, the parties agree that the tenants have not informed the landlord of their forwarding address in writing, yet the tenants remain free to do so.

The landlord's agent acknowledges that the landlord has not made an application for dispute resolution claiming against the security deposit, yet the landlord remains free to do so.

In consideration of all of the above information, I find that the tenants are not entitled to double the return of their security deposit and I therefore dismiss this aspect of their claim with leave to reapply. The disposition of the security deposit has already otherwise been addressed above pursuant to section 38(1) of the *Act*.

As to the tenants' claim for reimbursement of the cost of replacing a drill which was allegedly stolen by an employee of the landlord's, this is not a matter that falls under the jurisdiction of the *Act.* Rather, it is a matter that is properly pursued with the police. Accordingly, I dismiss this aspect of the tenants' claim.

Finally, as the outcome of this hearing has not favoured the applicants, I dismiss their claim for recovery of the filing fee from the landlord.

Conclusion

I hereby dismiss all aspects of the tenants' application with the exception of the application for double the return of the security deposit, which is dismissed with leave to reapply.

DATE: March 9, 2009 _____

Dispute Resolution Officer