

Dispute Resolution Services

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

Decision

Dispute Codes: MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for the return of double their security deposit and a cross-application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to the return of double their security deposit?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on November 1, 2008 and ended on April 30, 2009. The tenancy was set to run for a fixed term of one year, to expire on November 15, 2009. The tenants paid a security deposit of \$925.00 at the outset of the tenancy. The tenancy ended pursuant to the tenants' notice to the landlord that they would be vacating on April 30, 2009. The tenants testified that they provided their forwarding address on the move-out condition inspection report and again the next day, May 1, by placing their forwarding address in the landlord's mailbox. The landlord testified that the tenants did not provide him with their postal code on the move-out condition inspection report and that he specifically asked the tenants to provide him with the postal code. The tenants testified that this is why they gave him their full address including the postal code on May 1. The landlord denied having received the tenants' full address on May 1 and testified that the first time he had the tenants' full forwarding address was when he received their application for dispute resolution.

The tenants testified that they thoroughly cleaned the rental unit and provided a note

from one of the tenants' mothers in which she stated that she is a professional housecleaner and that she personally cleaned the rental unit to professional standards. The landlord testified that much of the rental unit was unclean and that he had to spend approximately 15 hours cleaning the rental unit, which time included time spent traveling from his home to the rental unit. The landlord recorded that he spent from 6:00 p.m. on April 30 – 1:00 a.m. on May 1 and from 6:00 a.m. – 2:00 p.m. on May 1 cleaning the rental unit. The tenants provided letters from neighbours, one who wrote that she observed the new tenants moving into the rental unit on the same day the tenants vacated and the other who wrote that she saw the rental unit on April 29 and thought the tenants had cleaned thoroughly. The condition inspection report was generated by the landlord and the tenant L.G., who signed the report agreeing that it fairly represented the condition of the rental unit. Although the landlord made changes to one area of the report after L.G. signed it, the parties agree that the main body of the report was not changed after L.G. signed. The main body of the report shows that 26 areas were marked as being dirty. The report includes comments that window tracks were dirty, dead bugs and dust were in several areas, windows were uncleaned, bathrooms were unclean, walls were unwashed and floors were uncleaned.

The landlord claims \$225.00 in administration fees for the time spent advertising the unit, responding to inquiries and showing the unit. The landlord testified that he hired an assistant whom he paid \$25.00 per hour for approximately 6 hours to advertise and respond to inquiries. The landlord also claims \$200.00 for replacing locks on exterior doors and \$45.00 for replacing the lock on one bedroom door. At the hearing the parties agreed that the tenants had never been given a key to the lock for the bedroom door. The parties agreed that the tenants returned all the keys they had been given.

The landlord claims a further \$393.75 for 15 hours of cleaning at a rate of \$25.00 per hour. The landlord billed for the advertising, lock replacement and cleaning through his company and added GST on all charges.

Analysis

It is clear that the tenants broke the fixed term tenancy agreement by vacating the rental unit prior to the end of the fixed term. The landlord was able to re-rent the rental unit for

May 1 and did not lose any income. The landlord would have been entitled to recover proven out of pocket expenses for advertising the rental unit, but in this case there were none. I find that the activities of responding to telephone inquiries and showing the rental unit form part of the regular duties of a landlord operating a rental business and are not compensable. The landlord's claim for the cost of performing those duties is dismissed.

In contrast, the cost of cleaning a rental unit is not part of the normal course of doing business. The landlord is entitled to be compensated for the time spent cleaning the rental unit. However, I am not prepared to consider the time spent traveling from the landlord's home to the rental unit. At the hearing one of the tenants testified that although the landlord claimed to have been at the rental unit from 6:00 p.m. on April 30 – 1:00 a.m. on May 1, she was in the rental unit until 7:30 p.m. on April 30 and at a neighbour's home until 10:30 and did not see the landlord at the unit during that time period. The landlord explained that he also billed the tenants for the time spent traveling to and from the rental unit. I find that the landlord's times cannot be considered accurate as for at least 4 ½ hours of the time he claims he spent cleaning he was not even at the rental unit. I am satisfied that some cleaning was required. Although the tenants claim to have cleaned thoroughly and have a note from a professional housecleaner confirming that the unit was clean, I consider this to be contradicted by the tenant L.G.'s acknowledgment on the move-out condition inspection report that much of the rental unit required cleaning. In the tenancy agreement the tenants agreed to a charge of \$25.00 per hour for any cleaning that was required at the end of the tenancy. Having reviewed the cleaning that was required, I find that an award of \$175.00, which represents 7 hours of cleaning at \$25.00 per hour, will adequately compensate the landlord and I award him that sum. The landlord's claim for the cost of replacing locks is dismissed. The tenants returned all of the keys and because the Act requires the landlord to replace locks at the new tenant's request, at his own cost, I find that the cost of replacing locks should not be laid at the feet of the tenants. The landlord's claim for GST is denied as the tenancy agreement was between the tenants and the landlord in his personal capacity rather than as a corporate entity. I further award the landlord the \$50.00 cost of his filing fee.

As for the tenants' claim for the return of double the security deposit, the tenants have the burden of proving that the landlord received their forwarding address in writing. While an address without a postal code may be considered sufficient, in this case the landlord specifically requested that the tenants provide their full address complete with the postal code and the tenants agreed to do so. However, the tenants did not at the hearing provide proof that they had served the landlord with their complete address. I find that the landlord did not receive the tenants' full address in writing until he received their application for dispute resolution. The landlord acted within 15 days of having received that application and accordingly I find that the landlord is not liable for double the security deposit under section 38 of the Act. The tenants' claim is dismissed in its entirety.

Conclusion

The tenants' claim is dismissed. The landlord is awarded \$225.00 which represents \$175.00 for cleaning and the \$50.00 filing fee. I order that the landlord deduct \$225.00 from the \$927.31 security deposit and interest and I order the landlord to return the balance of \$702.31 to the tenants forthwith. I grant the tenants an order under section 67 for \$702.31. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated September 04, 2009.