

DECISION AND REASONS

Dispute Codes: MND, MNSD, FF

Introduction

This hearing was convened upon the joint applications of the tenant and the landlord:

The tenants' application filed July 17, 2009 seeks:

1. A monetary order for the return of their security and pet damage deposits.

Total sum sought by the tenants on their application \$4,000.00

The landlord's application filed July 24, 2009 seeks:

1. A monetary order for damage to the unit site or property;
2. An Order to be allowed to keep all or part of the pet damage or security deposits; and
3. An Order to recover the filing fee paid for this application.

Total sum sought by the landlord on his application: \$2,000.00

All parties appeared at the hearing and gave evidence under oath.

Background Summary

This was a fixed term tenancy commencing June 1, 2008 and ending at the end of May 2009. The tenants testified that the rent was fixed at \$1,950.00 per month. The tenants paid both a security deposit of \$1,000.00 and a pet damage of \$1,000.00 on May 29, 2009. The tenants testified that they provided their forwarding address to the landlord on May 28, 2009. The tenants testified that their deposits were not returned to them and, on June 23, 2009, they sent a FAX to the landlord again requesting their deposits and providing their forwarding address. The tenants received a letter from the landlord dated June 24, 2009. That letter is submitted in evidence. It advising of repairs required to the dishwasher and washing machine. In the letter the landlord claims that the tenants did not use the property dishwasher soap causing damage to the seals and spring inside the drainage vale. Further, the landlord says the washer required repair as it was making a loud noise when spinning and this was due to overloading the machine with heavy clothing "...possible camping stuff because there were pieces of rocks in the side of the washer plus the filters were full of dog hair and never been cleaned", the letter ends:

In conclusion there is a partial deduction from your damage deposit for repairing the washer and the remaining will be a cheque attached to this letter along with copies of the invoices sending to the address you told me.

(reproduced as written)

The landlord says he did not receive the tenant's forwarding address until he received their fax on June 23, 2009.

With respect to the landlord's claim the landlord testified that he is not seeking the \$2,000.00 as set out in his Application for Dispute Resolution. The landlord says he is seeking recovery of his filing fee, postage costs.

The landlord says the tenants damaged the washer by putting camping gear in it. The landlord submitted copies of invoices from The Appliances Physicians totalling \$584.17. The landlord submitted that the Dispute Resolution Officer could call The Appliances Physicians to seek further information as to the damage caused by the tenants.

Findings

Tenants' Application

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord **must** pay the tenant double the amount of the deposit (section 38(6)).

Further, if the landlord fails to perform a condition inspection at move-in and move-out the landlord may not make a claim against the deposit.

The evidence shows that the tenants paid a security deposit and pet deposit totaling \$2,000.00 on or about May 29, 2008. Condition Inspection reports were not submitted in evidence and there is insufficient evidence to find that they were prepared.

The evidence shows that the tenants supplied their forwarding address to the landlord and he received it on June 23, 2009. On or about June 24, 2009 the landlord returned the sum of \$1,784.20 to the tenants although the tenants did not agree to any deductions from their deposits.

I find that the landlord did not comply with Section 38 and he must pay the tenants double the deposit. The original deposits totaled \$2,000.00 and doubling the entire deposits would now result in a monetary Order being made in favour of the tenants in the sum of \$4,000.00. However, the evidence is that the tenants have received a cheque from the landlord in the sum of \$1,784.20 which they have chosen not to negotiate. I find that the landlord should not be penalized for the tenants' decision not to negotiate this cheque. Therefore, as the landlord did return part of the deposit within 15 days of receipt of the forwarding address I will double only the balance that he did not return, that is \$215.80 for a total of \$431.60.

I will issue an Order in favour of the tenants in the sum of \$2,215.80. If the tenants negotiate the cheque they currently on the landlord's account in the sum of \$1,784.20 then the balance owing by the landlord to the tenants on this Order is \$431.20. If the cheque in the sum of \$1,784.20 is not negotiable then the tenants may enforce the Order in the full sum of \$2,215.80.

With respect to the landlord's claims I find he has failed in his burden of proving that the tenants' caused damage to the rental unit washer or dishwasher such that they should be responsible for paying for any repairs. All of the landlord's claims are therefore dismissed.