



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

Landlord: MND, MNR, MNSD, MNDC, FF
Tenants: MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for unpaid rent or utilities; for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain the security deposit and pet damage deposit in partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for a monetary order for double the return of the security deposit and pet damage deposit and to recover the filing fee from the landlord for the cost of this application.

The parties each gave affirmed evidence, and were given the opportunity to cross examine each other on their evidence.

The tenants provided additional evidence in advance of the hearing which was also provided to the landlord. The landlord also provided an evidence package, which was not received by the Residential Tenancy Branch or by the tenants within the time prescribed by the *Residential Tenancy Act* or the Rules of Procedure. The tenants objected to the evidence being considered. For that reason, the evidence provided by the landlord is not considered in this Decision. All other evidence and information has been reviewed and considered.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for money owed or compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

Are the tenants entitled to recovery or double the recovery of the security deposit and pet damage deposit?

Background and Evidence

This tenancy began on March 1, 2008 as a fixed term tenancy which expired on February 28, 2009 and then reverted to a month-to-month tenancy. Rent in the amount of \$1,575.00 was payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$787.50 as well as a pet damage deposit in the amount of \$787.50. A move-in condition inspection report was completed, and the tenants provided a copy of the report in advance of the hearing.

The tenants testified that on March 21, 2010, the male tenant paid the rent for the month of April and gave verbal notice to the landlord of their intention to vacate the unit, and told the landlord that he would send him an email to confirm it. The email was sent to the landlord on March 24, 2010 and later that evening both tenants went to the landlord's residence to deliver the notice personally. When they arrived, no one was home, so they posted the notice to the landlord's door.

The move was completed on April 9, 2010. On April 10, 2010, the male tenant left a voice mail message for the landlord to ensure that the landlord knew that the tenants had vacated to give him additional opportunity to show and re-rent the unit.

On May 1, 2010 the tenants sent another email to the landlord which contained their forwarding address. A copy of that email and proof of confirmed delivery was provided by the tenants in advance of the hearing. The tenants also testified that they contacted landlord several times by email and by phone in an effort to conduct the move-out condition inspection and receive back the deposits paid. They received no response from him, with the exception of one email wherein the tenants were advising the landlord of a perspective renter and he replied to that email immediately. They further testified that the landlord had the cell numbers of both tenants, but were never contacted to do the move-out condition inspection.

The landlord agreed that he received the verbal notice from the tenant on March 21, 2010 when the rent was paid for the month of April, 2010. He further testified that he did not receive proper written notice with the signatures of the tenants, and that on advice from a landlord's association he could not consider it proper notice or advertise the unit for rent. He further testified that he received the email from the tenants in mid-April advising of another perspective tenant and that he did respond immediately. He further testified that he attempted to call the tenant, but the male tenant's cell phone had been disconnected. He further stated that on April 23, 2010 he sent an email to the tenants stating that he needed written notice of their intention to vacate the unit.

The landlord also testified that he posted a notice to end tenancy for unpaid rent to the door of the rental unit on May 2, 2010 and did not enter the unit, and therefore did not know that the tenants had already vacated. He conducted the move-out condition inspection report without the tenants present because he did not have a means to contact them, however did not provide a copy of that report.

The landlord further testified that he hired a "handy-man" to repair damage to the unit and remove garbage, some of which was not due to these tenants, but he did not provide copies of any receipts or any other evidence of damages.

Analysis

Firstly, with respect to the landlord's application to retain the security deposit, I find that the landlord was able to communicate with the tenants by email, as he had done in the past. The *Act* places the onus on the landlord to provide the tenant with 2 opportunities to complete a move-out condition inspection. I find that the landlord failed to do so, and, pursuant to Section 36 (2), the landlord's right to claim against the security deposit and pet damage deposit is extinguished.

Further, respecting the landlord's claim for damage to the unit, site or property, the onus is on the landlord to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the negligence of the tenants or the actions of the tenants in breaching the *Act* or the tenancy agreement;
3. The amount of the damages or loss;
4. What efforts the claiming party made to mitigate, or reduce the damage or loss suffered.

The landlord has failed to establish any damage or loss suffered, and therefore the application for damages must also fail.

With respect to the landlord's application for loss of rent, the landlord, by his own evidence, posted a notice to the door of the rental unit and relied on the *Act* with respect to service. The tenants are also entitled to rely on the *Act* with respect to service, and they also testified that they posted their notice to vacate to the door of the landlord's residence. In the circumstances, I find that in both cases, the documents were served in accordance with the *Act*. Section 90 of the *Residential Tenancy Act* states:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

- (a) If given or served by mail, on the 5th day after it is mailed;
- (b) If given or served by fax, on the 3rd day after it is faxed;
- (c) If given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

(d) If given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

The evidence of the tenants is that they posted their notice to vacate the premises on March 24, 2010, and I find that, in accordance with Section 90, the notice is deemed to have been served on the landlord on March 27, 2010. Therefore, the landlord's application for unpaid rent must also be dismissed.

With respect to the tenants' application for double the return of the security deposit and pet damage deposit, I find that the tenants notified the landlord in writing on May 1, 2010 of their forwarding address. The tenants provided confirmation of delivery of that email, and the landlord failed to return any part of either deposit. I find that the tenants have established a claim for the security and pet deposits of \$1,575.00, accrued interest of \$20.33, and double the base amount of the deposits in the amount of \$3,150.00, for a total of \$3,170.33. The tenant is also entitled to recover the \$50.00 filing fee for this application.

Conclusion

The landlord's application is hereby dismissed in its entirety without leave to reapply.

I grant the tenants an order under section 67 for the balance due of \$3,220.33. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: October 12, 2010.

Dispute Resolution Officer