Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of all or part of the pet and or security deposit, and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenants to the Landlords, was done in accordance with section 89 of the *Act*, sent via registered mail on February 4, 2011. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term written tenancy agreement effective May 1, 2010 which was set to switch over to a month to month tenancy after October 31, 2010. Rent was payable on the first of each month in the amount of $1,250.00. The Tenants paid three deposits on April 1, 2010, a key deposit of $25.00, a security deposit of $625.00, and a pet deposit of $200.00. The tenancy ended November 28, 2010 after the Tenants personally served the Landlords with a written notice to end tenancy on October 31, 2010. The notice to end tenancy included the Tenants forwarding address.

The Tenants testified that when they arrived to move into the unit the Landlords were still moving out their furniture. As a result, a move-in inspection was not completed and the report form was left with the Tenants to complete in the Landlords' absence. No move-out inspection was completed by the Landlords, and no attempts were made by the Landlords to schedule a move-out. After the tenancy ended the Tenants made repeated efforts to have their deposits returned and sent a courtesy e-mail to the Landlords on December 14, 2010 to return their deposits before the deadline. He attempted to educate the Landlords on the Act however they still just made excuses. Then on December 20, 2010 he became upset when he was put off again. Finally on December 21, 2010 the Landlords returned a portion of their deposits in the amount of $625.00 via e-mail interact transfer. They are now seeking the return of double their deposits including the security deposit, pet deposit and key deposit.

The Landlord stated that the Tenant was not speaking the truth. She testified she was moving her offices and was having complications getting into her computer to see their tenancy agreement. She said she had a conversation with the Tenants on December 15, 2010 and that they agreed to the deposits being sent back late.

The Landlord began to speak about the condition of the unit at the end of the testimony and stated that her witness, who was there with her, could testify to the condition.

The Witness testified that he rents a room from the Landlord in her residence and he is not related to, or in a relationship with, the Landlord. He is not an employee of the Landlord but he does help her when needed. He stated that he assisted the Landlord in cleaning this rental unit and that he spent 1 ½ hours washing the baseboards and the floor because there was an overwhelming smell of cat urine. He could not provide testimony as to the date he cleaned the unit.

The male Tenant questioned whether the Landlord had followed due process because she did not inform anyone at the outset of the hearing that she had a witness in the room with her to provide testimony.

The Landlord continued on with her testimony and stated that her sister was the one who conducted the move-in inspection so she could not provide testimony to that. She conducted the move-out inspection after the Tenants had already vacated the unit. The Landlord stated she returned the Tenants' security deposit of $625.00 and argued that they agreed at the onset of their tenancy that the pet deposit was non-refundable as it is written in their tenancy agreement. She confirmed she has made no application

for dispute resolution to keep the deposits and she does not have an Order issued by the *Residential Tenancy Branch* authorizing them to keep the deposits.

In closing the Tenants stated that their two male cats have been neutered and have never sprayed since they have owned them. They argued that there was no evidence to support the Landlords' claims. They never spoke with the Landlord on December 14, 15, or 16th and they certainly did not agree to allow the Landlords to return their deposits late. The Landlords are trying to bounce the responsibility between the three of them here just like they did during his tenancy, always saying the other one was dealing with that issue.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

I am required to consider the evidence before me against its consistency with the probabilities that surround the preponderance of the conditions before me. I find that the Landlord's Witness' evidence was coloured by the fact that he resides with the Landlord and that he could not provide more details such as the date of when he allegedly cleaned the unit; therefore I did not consider the testimony provided by the Landlord's Witness. I did however consider the testimony and evidence provided by the named applicants and respondents.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. In the presence of opposing testimony I find there is insufficient evidence to support the Tenants agreed to allow the Landlords to disperse their deposits late.

Section 20(e) of the Act states a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet deposit.

In this case the evidence supports the tenancy ended November 28, 2010, and the keys were returned, in accordance with Section 44 (1)(d) of the Act that states a tenancy ends when the tenant vacates the rental unit.

The evidence supports that the Tenants provided the Landlords with their forwarding address on October 31, 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenants' security deposit, pet deposit, and key deposit, in full, or file for dispute resolution no later than December 13, 2010.

No application was made by the Landlords and a partial payment of $625.00 was not made until December 21, 2010.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security and or pet deposit.

Based on the aforementioned, I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double their pet and security deposits plus interest plus the key deposit.

The Tenants have succeeded with her application therefore I award recovery of the $50.00 filing fee.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Double the security deposit (2 x $625.00)	$1,250.00
Double the pet deposit (2 x $200.00)	400.00
Return of the key deposit	25.00
Interest owed on the security deposit of $625.00 and pet deposit of $200.00	0.00
Filing Fee	50.00
SUBTOTAL AMOUNT DUE TO THE TENANTS	**$1,725.00**
Less payment received December 21, 2010	-625.00
TOTAL AMOUNT DUE TO THE TENANTS	**$1,100.00**

Conclusion

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for **$1,100.00**. The order must be served on the respondent Landlords and is enforceable through the Provincial Court 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: March 08, 2011.

Residential Tenancy Branch