



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

For the landlord – OPB, MNSD, FF

For the tenants - MNDC, MNSD, FF, O

Introduction

This decision deals with two applications for dispute resolution, one brought by the landlord and one brought by the tenants. Both files were heard together. The landlord seeks an Order to keep the tenants security deposit and pet deposit, to recover a loss of rental income and to recover their filing fee. At the outset of the hearing the landlord withdrew her application for an Order of Possession. The tenants seek a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement, an Order for the return of their security deposit and pet deposit and to recover their filing fee

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to keep the tenants security and pet deposits?
- Is the landlord entitled to recover a loss of rental income?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to the return of their security and pet deposits?

Background and Evidence

Both parties agree that this tenancy started on October 01, 2010. This was a fixed term tenancy which was due to end on September 31, 2011. The tenants ended the tenancy on November 15, 2010. Rent for this unit was \$3,200.00 per month. The tenants paid a security deposit of \$1,600.00 and a pet deposit of \$1,600.00 both on September 03, 2010. A move in and a move out condition inspection were completed with both Parties present. The tenants gave the landlord their forwarding address in writing on October 27, 2010.

The tenants testify that the landlord did not meet their obligations by providing a clean vacant unit. They expected the house to be ready for vacant occupation by them and did not expect to find some of the owners belongings still in the house. The tenants state the unit was not cleaned prior to their tenancy starting and the cupboards and house still had kitchen equipment, bathroom items, garden furniture and pots and large items of the landlords' furniture in place such as a piano, a wooden hall stand and a large bench. The tenants state the front door did not work correctly, the fridge was noisy and other issues such as the service requested for the furnace was not addressed. The tenants state they feel the landlord had ample time to prepare the house as they did not actually move in until October 18, 2010.

The tenants state that after they moved in the landlord organised the carpets to be cleaned and sent in cleaners to clean some areas of the house. The tenants state they spent time boxing up the landlords belongings from the cupboards and placed these boxes in the garage. The tenants state nothing else was done within the first nine days of their tenancy so they decided to give the landlord Notice to End Tenancy on October 27, 2010 and they moved out on November 15, 2010.

The tenants seek to recover the rent paid for October, 2010 of \$3,200.00 because the landlord did not meet their obligations in renting this house and seek to recover half a months' rent for November, 2010 of \$1,600.00.

The tenants also seek to recover \$800.00 for their moving expenses incurred because they state they had to move from the house because the landlord had not met their obligations

(receipt provided) and \$78.40 for the costs to Canada Post in doing a change of address (receipt provided).

The landlord disputes the tenant's claims she testifies that things were identified at the move in inspection such as the cleaning required. She states professional cleaners were sent to clean the unit the day after the tenants moved in. The landlord states the tenants sent the cleaners home after a few hours and said they would do some of the cleaning themselves. The landlord states she understood the tenants did not want the landlords' belongings in the house but as they came as part of the rental and had been used by other tenants previously, if these tenants had viewed the house prior to occupation, these items could have been removed then by their request. The landlord states the owner of the property was happy to work with any of the tenant's requests to accommodate them during their tenancy. The landlord testifies she was working her way through the tenant's requests when they gave notice to end the tenancy.

The landlord testifies that the house was not unfit to live in and states she was not given ample opportunity to meet all the tenant's requests in such a short time frame. The landlord testifies the house was re-rented for April 01, 2011.

Both parties have submitted photographs of the property which have clearly been taken at different times. The tenants dispute the landlords' photographic evidence and state the photos do not represent the property at the start of their tenancy. The landlords' witness who is the administrator testifies that she submitted the wrong photographs in evidence.

The landlord seeks an Order to keep both the security deposit and pet deposit to cover unpaid rent for the remainder of November and for December, 2010 and seeks a Monetary Order to recover the difference in the loss of rental income for December, 2010 of \$1,600.00.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. With regard to the photographs submitted by the landlord; as the landlord agrees these were the wrong photographs I have disregarded this evidence from the landlord.

With regard to the landlords claim to keep the security and pet deposits totaling \$3,200.00 in partial satisfaction of unpaid rent; In this matter I refer both parties to s. 38 of the *Act* which states: a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

I find that the landlord did receive the tenants forwarding address in writing on October 27, 2010 and the tenancy did not end until November 15, 2010. As a result, the landlord had until November 30, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security deposit and did not file an application to keep it until December 02, 2010 consequently, pursuant to section 38(6)(b) of the *Act*, the landlord must pay the tenants double the amount of their security deposit to a sum of **\$6,400.00**.

With regard to the landlords claim to recover a loss of rental income; when a tenant enters into a fixed term tenancy a tenant is not entitled to end the tenancy unless a mutual agreement is in place unless the tenancy is frustrated. In this matter the tenants argue that they could not remain in the house because the landlord had not met their obligation to ensure the house was fit for occupation. The landlord argues the house was fit to live in and she was working towards remedying all the tenant's requests.

I have looked at both arguments in this matter and find the tenants did not view this property before taking occupation and the landlord was working with the tenants to meet their personal requirements. I find the tenants did not give the landlord amply opportunity to remedy the removal of the furniture and other belongings or to remedy some of their other requirements. I also find the landlord acted expediently in addressing other issues identified on the move in condition inspection report. Consequently, it is my decision that the tenants are in breach of s. 45(2) of the *Act* by ending the tenancy before the end of the fixed term.

Therefore, with regard to the tenants claim to recover rent paid for October and half of November, 2010 to the sum of \$4,800.00; this section of their claim is dismissed as they were not entitled to end the tenancy at that time.

With regard to the tenants claim for moving expenses of \$800.00 and change of address expenses of \$78.40; I find as it was the tenants choice to move from the rental unit that they are not entitled to recover the cost of this move or change of address expenses from the landlord. Therefore this section of their claim is dismissed.

It is my decision however, when looking at sections 38(4)(b), 67 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security and pet damage deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, as I have found the tenants are in breach of s. 45(2) of the *Act* I order the landlord to keep part of the tenants' security and pet deposits award in payment of the landlords' loss of rental income for half of November and for December, 2010 to the sum of \$4,800.00.

As both parties have been only partially successful with their claims it is my decision that they must both bear the cost of filing their own applications.

The landlords' monetary award has been offset against the tenants' monetary award. A Monetary Order has been issued to the tenants for the following amount:

Double the security and pet deposits	\$6,400.00
Total amount due to the tenants	\$1,600.00

Conclusion

I HEREBY FIND in partial favour of the landlords claim. The landlord is entitled to recover the sum of \$4,800.00 from the tenants and this sum has been offset against the tenant's monetary award.

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,600.00**. The order must be served on the respondent 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: April 06, 2011.

Residential Tenancy Branch