



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), an order to retain the security deposit, and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to a monetary order for money owed or compensation for damage or loss, an order to retain the security deposit and to recover the filing fee?

Background and Evidence

The tenancy agreement signed by the parties and entered into evidence by the Landlord indicated that this tenancy was to start on March 1, 2011, on a month to month basis, that rent was \$1,100.00 per month and the Tenants paid a security deposit of \$550.00 on February 5, 2011.

The Landlord's application included a monetary claim for lost rent of \$1,100.00 for March 2011 and recovery of the filing fee. During the testimony, the Landlord agreed that her application amount could be changed to request lost rent of \$1,000.00.

The Landlord also submitted copies of email exchanges between the parties.

The Landlord stated that shortly after the parties entered into the tenancy agreement on February 4, 2011, she began receiving multiple requests from the Tenants to lower the monthly rent and if not, the Tenants informed the Landlord they would not move in and that they wanted their security deposit returned.

The requests were initially denied, but the Landlord later agreed to lower the monthly rent to \$1,000.00; however despite this, the tenancy agreement was never amended, The Landlord submitted that she never agreed to return their security deposit.

The Landlord submitted that she received an email from the Tenants on February 26, 2011, informing her that they, the Tenants, were not moving in and that they wanted their security deposit returned.

The Landlord submitted that she lost rent for the month of March 2011, due to keeping the rental unit available for the Tenants' use.

The Tenants stated they had talked to the Landlord's husband, whose name also appears on the tenancy agreement, about lowering the rent, which resulted in the Tenants believing the rent would be lowered.

The Tenants submitted that during the course of dealing with the Landlord, they had some "scary" moments and did not feel comfortable moving in, and that they have not moved in.

The Tenants did not submit any documentary evidence.

Analysis

Based on the testimony, evidence, and a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the Landlord to prove damage or loss.

I find the Landlord and the Tenants entered into a valid, enforceable month to month tenancy agreement and that the Tenants were responsible for paying rent, beginning March 1, 2011, according to the terms of the agreement, whether they moved in or not.

Section 45 (1) of the Residential Tenancy Act requires a tenant to give notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Therefore I find that the Tenants submitted insufficient notice to end the tenancy and are liable to the Landlord for rent for the month of March 2011. I further find that the Landlord has established a **monetary claim of \$1,050.00**, comprised of loss of rent for March 2011, in the amount of \$1,000.00, at the Landlord's consent to reduce the amount claimed, and the filing fee of \$50.00.

I **order** that the Landlord retain the security deposit of \$550.00 in partial satisfaction of the claim and I **grant** the Landlord an order under section 67 for the balance due of **\$500.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord is granted a Monetary Order in the amount of **\$500.00**.

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: June 16, 2011.

Residential Tenancy Branch