



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with applications by the landlord and the tenants. The landlord applied for monetary compensation and an order to retain the security deposit in partial compensation of the claim. The tenants applied for double recovery of the security deposit and further monetary compensation under the Act. The landlord, one tenant and a witness for the tenant participated in the teleconference hearing.

The landlord stated that he did not receive a copy of the tenants' application. The tenants sent their application by registered mail to the landlord at the address provided by the landlord for service. The landlord stated that he was often away for business and did not always check his mail. I determined that the tenants had complied with the requirements for service, and I informed the parties that I would proceed to hear both applications.

In the hearing the landlord stated that he had submitted several pages of evidence to the Residential Tenancy Branch by fax. I did not receive this evidence, and there was no electronic record of the landlord's evidence having been received by the Branch. The tenant stated that he had not received a copy of this evidence. I informed the landlord that he could proceed by giving oral testimony, which he did. After the hearing concluded, the landlord faxed in several pages of evidence. I did not admit or consider that evidence in reaching my decision in this matter.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Are the tenants entitled to double recovery of the security deposit?
Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on July 15, 2010. The tenancy agreement indicates that the tenancy was to be for a fixed term. Originally the term was to be for six months, ending January 15, 2011, but the words "six" and "15 Jan" were scratched out and initialled by the landlord and tenant. "Six" was replaced with "five and a half" and "15 Jan" was replaced with "30th Dec." The year 2011 was not amended. The monthly rent was \$1500. At the outset of the tenancy, the tenants paid a deposit of \$1500. On July 20, 2010 the landlord and the tenants inspected the rental unit and the tenants wrote a note which indicated that there was damage to the floors and walls. The tenancy ended on December 31, 2010.

The evidence of the landlord on his claim was as follows.

The tenants caused damage to the rental unit, including damaging the walls, hardwood floors, carpets and electronic equipment. The tenants also failed to clean the unit before they moved out. In his original application the landlord claimed \$4500 compensation for repairs and cleaning. The landlord later submitted evidence in which he increased his claim to "around" \$8000. In the hearing, the landlord stated that he sought a total claim of \$9,298.

In December 2010, the landlord attempted to show the rental unit to prospective new renters, but the tenants threatened that if the landlord did not return their deposit before the end of the tenancy, they would not allow anyone else to view the suite. Because of this, the landlord lost \$1900 in rent.

The tenants' response to the landlord's claim was as follows.

The floors and walls were already damaged at the beginning of the tenancy. On December 29, 2010, the tenants paid a professional cleaning company \$210 to clean the rental unit. The tenants submitted the cleaning invoice as supporting evidence. The tenants disputed the landlord's claim in its entirety.

The evidence of the tenants on their application was as follows.

The tenancy ended on December 31, 2010, and the tenants emailed the landlord their forwarding address. The tenants applied for double recovery of their security deposit on the basis that the landlord failed to do proper move-in and move-out inspections. However, the tenants acknowledged that they did inspect the unit with the landlord at the beginning of the tenancy and they wrote a note regarding the condition of the unit. They also inspected the unit with the landlord at the end of the tenancy, and the landlord wrote up a letter regarding the condition of the unit at move-out.

The tenants claimed \$1500 in compensation for the landlord breaking the tenancy agreement. The tenants argued that the tenancy was supposed to end on December 31, 2011, as indicated on the tenancy agreement.

The tenants also claimed \$360 in compensation because the landlord refused to give them a mailbox key, and they had to incur travel costs to collect their mail elsewhere for the duration of the tenancy.

The landlord's response to the tenants' application was as follows.

The landlord applied in time to keep the security deposit. Move-in and move-out inspections were done with the tenants. The tenants are not entitled to double recovery of their deposit.

The tenants knew that the tenancy was for only five and a half months. The only error was in failing to amend "2010" to "2011." The addendum to the tenancy agreement also made it clear that the tenancy would end after five and a half months.

In regard to the mailbox key, the landlord first stated that the tenants told him they did not need access to the mailbox. He later stated that the tenants did not need access to the mailbox because the tenancy was only for five and a half months. The landlord disputed the tenants' claim in its entirety.

Analysis

In regard to the landlord's claim, I find that the landlord failed to provide sufficient evidence to support his claim. Even if the landlord had properly served his documentary evidence on the Branch and the respondents, I would have found that the landlord did not provide sufficient evidence of the damage to the rental unit, such as photographs or the testimony of other witnesses. I therefore find that the landlord is not entitled to any of his monetary claim.

In regard to the tenants' claim, I find that the landlord applied to keep the security deposit within the required time frame. Further, I find that while the landlord did not use the usual Condition Inspection Report for the move-in and move-out inspections, there were inspections done by the landlord and tenants, and written reports produced both times, and I therefore do not find that the landlord's claim to the security deposit was extinguished. The tenants are therefore not entitled to double recovery of their security deposit. The landlord must return the base amount of the deposit, \$1500.

I find that the failure to change “2011” to “2010” on the tenancy agreement was a minor drafting error, and it was clear that the tenancy was for a fixed term of five and a half months. The landlord did not breach the agreement by ending the tenancy early, and the tenants are not entitled to compensation for this.

The landlord failed to provide the tenants with a key for the mailbox, and therefore forced the tenants to find alternate means to receive their mail. The landlord’s testimony on this point was contradictory and lacking in credibility. I therefore find that the tenants are entitled to the amount claimed of \$360 for being deprived of access to mail delivery to the rental unit mailbox.

Conclusion

The landlord’s application is dismissed. As his application is dismissed, he is not entitled to recovery of the filing fee for the cost of his application.

The tenants are entitled to recovery of the base amount of their security deposit of \$1500, as well as \$360 for the landlord’s failure to provide a mail key. As the tenants’ application was partially successful, they are also entitled to partial recovery of their filing fee, in the amount of \$25. I grant the tenants a monetary order under section 67 for a total of \$1885. This order may be enforced in Small Claims 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: June 29, 2011.

Residential Tenancy Branch