



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed his Application on March 15, 2011, requesting a monetary order for unpaid rent or utilities, for compensation for loss under the tenancy agreement or the Act, to retain part or all of the security deposit, and to recover the filing fee for the Application.

The Tenants filed for the return of the security deposit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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.

I note the parties have been involved in one prior Dispute Resolution Hearing, which was concluded on February 25, 2011, under a different file number. The relevant portions of that Decision are described below.

Issue(s) to be Decided

Is the Landlord entitled to the monetary relief sought?

Are the Tenants entitled to the return of the security deposit?

Background and Evidence

This tenancy began in August of 2010, with the Tenants paying the Landlord a monthly rent of \$1,200.00, and a security deposit of \$600.00.

In January of 2011, the Landlord issued the Tenants a one month Notice to End Tenancy with an effective date to end the tenancy of February 28, 2011 (the "Notice").

The Tenants filed an Application for Dispute Resolution to dispute the Notice and to seek other relief. At the outset of that earlier hearing the Tenants confirmed they were vacating the rental unit. The earlier Decision sets this out as follows:

"At the outset of the hearing the tenants confirmed that they will be moving out of the rental unit and as such there is no longer a need to pursue cancelling the Notice to End Tenancy. I therefore amend the Application to exclude matters relating to ending the tenancy."

[Reproduced as written.]

In this present case, the Landlord is claiming that the Tenants took away his opportunity to rent the unit for the following month of March 2011, and has suffered a loss of rent for one month.

The Landlord testified that after he issued the Notice to the Tenants, he began showing the rental unit to other prospective renters. He testified he had accepted a security deposit from a new renter, however, when the Tenants filed their Application to dispute the Notice he had to give the deposit back to the prospective renter.

The Landlord testified that the Tenants knew they were going to move out at the end of February as they had already started packing and removing items from the property.

The Landlord also claims the Tenants failed to clean the carpets in the rental unit and he had to clean up the garden after they left.

The Landlord claims \$1,200.00 for loss of one month of rent and \$100.00 for cleaning.

The Tenants replied that at the outset of the earlier hearing, they were asked if they wished to continue with both parts of their claim, i.e. cancelling the Notice and their other relief sought. They testified that they conferred with each other at that time and as there was no indication from the Landlord that he wanted to keep them as renters, they

decided to move out. They testified that they had no communication with the Landlord for the last period of the tenancy.

The Tenants also testified that they had started packing as they were not sure of what the outcome of the earlier hearing would be.

The Tenants testified that they had thoroughly cleaned the rental unit before they moved out, with help from friends.

As to the claim of the Tenants, they testified that the Landlord had not performed condition inspection reports when they moved into or out of the rental unit. They testified that they provided the Landlord with a copy of their forwarding address in writing on March 1, 2011, and did not agree in writing to allow the Landlord to keep any portion of the security deposit.

The Landlord testified that he did not think they should get the security deposit back as they had “robbed” him of one month of rent. He testified that he feels they were playing games with him and knew they were moving away. He further testified that the Tenants never gave him any indication they were moving out.

Analysis

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

I dismiss the claims of the Landlord. I find the Landlord had insufficient evidence, such as a condition inspection report, photographs, or invoices, to prove that the Tenants failed to clean the rental unit.

I also dismiss the Landlord's claim for one month of lost rent, as I find the Tenants moved out of the rental unit due to the Landlord's Notice to End Tenancy. A tenancy may only end in accordance with the Act, and I find this tenancy ended due to the Landlord's Notice. The Tenants were not required to provide any further notice to the Landlord under the legislation.

As to the claims of the Tenants, there was no evidence to show that they had agreed in writing that the Landlord could retain any portion of the security deposit.

By failing to perform incoming or outgoing condition inspection reports the Landlord extinguished his right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The security deposit is held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenants. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit and order it be returned to the Tenants. I further find that the Landlord applied to keep the security deposit with the required time limit and therefore, the security deposit is not doubled.

Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$650.00**, comprised of the security deposit of \$600.00 and the \$50.00 fee for filing this Application.

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 Act. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 27, 2011.

Residential Tenancy Branch