



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 Tenants filed their Application on March 16, 2011, seeking an order for double their security deposit and the cost of the filing fee for the Application.

The Landlord filed her Application on March 16, 2011, seeking monetary orders for money owed or compensation under the Act or tenancy agreement, for unpaid rent or utilities, to keep all or part 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.

Issue(s) to be Decided

Are the Tenants entitled to recover double the security deposit?

Is the Landlord entitled to the monetary orders sought?

Background and Evidence

This tenancy began in August of 2010, with the parties agreeing on a monthly rent of \$1,100.00, payable on the first of the month. The Tenants paid the Landlord a security deposit of \$550.00, in August of 2010. The parties agreed that the Tenants would pay 60% of the hydro bill to the Landlord. The parties agree that both incoming and outgoing condition inspection reports were performed.

The outgoing condition inspection report was performed on February 27, 2011, and it contains the forwarding address of the Tenants in writing. The Tenants also provided a copy of their forwarding address to the Landlord in writing at this time. The tenancy ended on February 28, 2011.

The Landlord was entering the hospital for a medical procedure on March 1, 2011, and informed the Tenants via email that she had a representative they could contact. In this email the Landlord also informed the Tenants, "I have very good reason for not refunding damage deposits for the full two weeks allowed under the RTB Act, as clearly demonstrated by your actions."

The Landlord was concerned that the Tenants had only returned two of three keys provided to them at the outset of the tenancy. Nevertheless, the Landlord testified during the hearing she did not get a third key cut.

More importantly, the Landlord asserted that the Tenants would have to pay for the hydro until the end of February 2011, although the bill had not yet arrived.

The Tenants refused to pay the Landlord for the last hydro bill. They assert they lived in the rental unit for eight months and have paid eight hydro bills.

The Landlord has provided a copy of the hydro bill for the period ending on February 28, 2011, and calculates the Tenants owe her \$107.22 for the final hydro bill.

The Landlord asserts the Tenants did not contact her representative or herself regarding the security deposit during the two weeks following the end of the tenancy. The Landlord alleges the Tenants intentionally did not respond to her requests on how they wanted to deal with the last hydro bill and the return of the security deposit.

Analysis

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

Tenants' claims

I find the Landlord has breached section 38 of the Act. Under this section, the Landlord is required to either return the security deposit or apply for arbitration to keep it, within 15 days of the later of the end of the tenancy or the receipt of the forwarding address of the Tenants. The Landlord did not file her Application within 15 days from the end of the tenancy. I note the Landlord was out of the hospital on March 9, 2011, and also had a representative who could have filed on her behalf within the required time frame. The Landlord should have filed within the required timeframe in order to avoid paying the Tenants double the deposit.

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.

Therefore, under section 38(6) of the Act, I must order that the Landlord pay the Tenants double the security deposit paid, subject to the offset below.

Landlord's claims

I find the Tenants are in breach of the Act, as they failed to pay the Landlord the amount due for the final hydro bill. Regardless of the number of hydro bills the Tenants may have paid, they did not pay the Landlord for the final portion of hydro used during the tenancy. Under the Act and Tenancy Agreement they were required to pay hydro for the unit during the tenancy. Therefore, I find the Tenants must pay the Landlord \$107.22 for the final hydro bill, subject to the offset below.

Offset of amounts awarded

I find the Tenants are entitled to the sum of \$1,150.00, comprised of double the security deposit (2 x \$550.00) and the filing fee for the Application.

I find the Landlord is entitled to the sum of \$157.22, comprised of the hydro bill to the end of February 2011, and the filing fee for the Application.

Pursuant to section 72, I order that the amounts be offset, as $\$1,150.00 - \$157.22 = \$992.78$, and therefore, I find the Tenants are entitled to a monetary order payable by

the Landlord in the amount of **\$992.78**. The Tenants are granted and issued an order in those terms.

Conclusion

Both parties have breached the Act. The Landlord failed to return or make application to keep the security deposit with the required 15 days under the Act. The Tenants failed to pay the Landlord the final portion of the hydro bill. The amounts awarded have been offset, with the result that the Landlord owes the Tenants **\$992.78**. A monetary order has been issued to the Tenants.

This decision is final and binding on the parties, except as otherwise provided for in the Act. 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: July 19, 2011.

Residential Tenancy Branch