

Decision

Dispute Codes: MT, CNR, MNDC, MNSD, AAT, LAT, RR

Introduction

This hearing was convened in response to the tenants' application for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation for the double return of the security deposit / an order allowing access to (or from) the unit for the tenant or the tenant's guests / an order authorizing the tenants to change the locks to the rental unit / and an order authorizing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided. Both parties attended and gave affirmed testimony.

While the tenants' application form does not specifically identify that the tenants seek a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement, it is clear from their written submission that, independent of the return of the security deposit, compensation sought falls within this category.

Issues to be decided

- Whether the tenants are entitled to any or all of the above under the Act, Regulation or tenancy agreement

Background and Evidence

A tenancy agreement was entered into by the tenants and the previous owner of the property for the period from April 1 to September 3[0], 2011. Pursuant to the tenancy agreement, monthly rent of \$1,000.00 was payable in advance on the first day of each month, and a security deposit of \$500.00 was collected. The new owners (current landlords) took possession of the property on or about May 2, 2011.

Only 1 of the 2 tenants named on the tenancy agreement is also named on the tenants' application for dispute resolution, male tenant "G.E." A female tenant named on the tenancy agreement, "T-R. L." is not named on the application. The second tenant named on the application (the only tenant in attendance to the hearing), "S.M.M." stated that she moved into the unit on or about May 26, 2011, and that tenant "T-R. L." vacated the unit sometime relatively early in the term of tenancy.

Prior to the present hearing, and arising from an application by the current landlords, pursuant to a Direct Request Proceeding an order of possession was issued in favour of the landlords on July 26, 2011. During the present hearing the parties agreed that the tenants actually vacated the unit on July 22, 2011, and the landlords testified that the tenants provided a forwarding address on that same date.

The landlords claim that following the end of tenancy, the unit was in need of extensive cleaning and repairs. While the landlords submitted a breakdown of related costs which they have incurred or expect to incur, there is not presently an application before me from them seeking a monetary order as compensation for these costs. The landlords have the option of filing such an application.

In the meantime, I have the tenants' application before me. However, as the tenancy has now concluded, I consider certain aspects of the tenants' original application to be withdrawn, as follows: more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy / an order allowing access to (or from) the unit for the tenant or the tenant's guests / an order authorizing the tenants to change the locks to the rental unit / and an order authorizing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

Analysis

Based on the documentary evidence and testimony of the parties, the various aspects of the tenants' application and my findings around each are set out below.

\$1,000.00*: *the double return of the security deposit*. I am satisfied that a security deposit in the amount of \$500.00 was collected by the original landlord / previous owner at the start of tenancy. I find there is insufficient evidence that a pet damage deposit was also collected. Section 38 of the Act addresses **Return of security deposit and pet damage deposit**, and provides in part as follows:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, section 38(6) provides:

38(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As the landlords have not either repaid the security deposit or filed an application to retain it within 15 days after July 22, 2011 (the date when tenancy ended and the tenants provided the landlords with their forwarding address), I find that the tenants have established entitlement to the double return of the security deposit in the total amount of \$1,000.00 (2 x \$500.00).

\$100.00: *moving expenses*. I find that as the tenancy ended in association with the landlord's issuance of a 10 day notice to end tenancy for unpaid rent or utilities, and the issuance of an order of possession in favour of the landlords, the tenants have failed to meet the burden of proving entitlement to recovery of costs related to moving. This aspect of the application is, therefore, hereby dismissed.

\$45.00 (\$20.00 + \$25.00) *costs arising from dealings with the S.P.C.A.* Evidence in support of these costs is comprised of a hand written letter from an acquaintance of the tenants in which the acquaintance speaks to a charge of \$20.00 for helping the tenant collect her animals from the S.P.C.A., and a receipt issued by the S.P.C.A. in the amount of \$25.00 ("license is necessary for release of dog.") I find that the tenants have failed to meet the burden of proving entitlement to these costs, as care and management of the tenants' animals is not the responsibility of the landlords. This aspect of the application is, therefore, hereby dismissed.

\$200.00: *storage fees*. In support of this aspect of the application, the tenants have submitted a hand written letter from an acquaintance who states that he assessed a cost of \$200.00 per month to store tenant "SMM's" belongings. I find, however, that the tenants have failed to meet the burden of proving entitlement to this compensation;

specifically, storage was required after the tenancy ended, and the tenancy ended in association with the landlord's issuance of a 10 day notice to end tenancy for unpaid rent or utilities, and the issuance of an order of possession in favour of the landlords. In the result, this aspect of the application is hereby dismissed.

\$400.00: *aggravated damages arising from an alleged assault by the landlord(s)*. In the absence of any documentary evidence or witness testimony in support of the allegation that such an assault took place, I find on a balance of probabilities that the tenants have failed to meet the burden of proving entitlement to this compensation. Accordingly, this aspect of the application is hereby dismissed.

\$200.00: *replacement of ipod*. In the absence of any evidence in support of the original purchase of this item, or evidence in support of its replacement value, or evidence related to its age and/or condition at the time of its alleged disappearance, I find that the tenants have failed to meet the burden of proving entitlement to this compensation. This aspect of the application is, therefore, hereby dismissed.

\$150.00: *replacement of collapsible fishing rod and tackle*. For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

In summary, the tenants have established entitlement limited to a monetary order as compensation for the double return of the security deposit. The landlords have the option of contacting an Information Officer at the Residential Tenancy Branch in order to discuss the method and manner of such payment to the tenants.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,000.00**. Should it be necessary, this order may be served on the landlords, filed in the Small Claims 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 *Residential Tenancy Act*.

DATE: August 26, 2011

Residential Tenancy Branch