



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenants for compensation for loss or damage under the Act, regulations or tenancy agreement, the return of a security deposit and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on July 21, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Is there damage or loss to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for the loss or damage and if so how much?
3. Are the Tenants entitled to the return of the security deposit?

Background and Evidence

This tenancy started on November 1, 2009 as a fixed term tenancy with an expiry date of November 30, 2010 and then renewed on a month to month basis. The tenancy ended April 30, 2011. Rent was \$950.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$475.00 on October 20, 2009.

The Landlord said she gave the Tenants a 2 Month Notice to End Tenancy for the Landlord’s Use of the Property dated March 31, 2011, to make repairs to the unit due to mould issues. The Landlord submitted a building permit, a building inspection report and receipts for the work completed. The building permit was issued April 8, 2011 and the final building inspection was done on August 9, 2011. The receipts the Landlord submitted into evidence totalled \$9,652.00. The repairs included a new roof, new insulation and repairs to the unit. The Landlord also said she gave the Tenants their April, 2011 rent back in the amount of \$950.00 less \$50.00 that the Tenants agreed in writing to be put towards cleaning the unit when they left the unit. The Landlord also said the Tenants agreed in writing to forfeit their security deposit of \$475.00 to clean

and make repairs to the unit. The Landlord included into evidence the signed written agreement between herself and the Tenants agreeing to retain the security deposit and the \$50.00 from the April, 2011 rent.

The Tenant said they moved out of the unit on April 30, 2011, which was one month prior to the effective vacancy date on the Notice to End Tenancy which was May 31, 2011. The Tenant said they did not want to move out, but they were told by the contractor that no one should be living in the unit while the repairs were being done. The Tenant said they did receive back their April, 2011 rent of \$950.00 less \$50.00 that they agreed to pay with their security deposit for cleaning the unit when they moved out of the rental unit. The Tenant said they made the application for compensation of 2 month's rent in the amount of on \$1,900.00 because they did not want to move out; the Landlord issued the Notice to End Tenancy before she received the building permit and they saw new tenants living in the other side of the duplex in June, 2011. The Tenant said he believed they were moved out of the unit wrongly. As well the Tenant said they have applied for their security deposit to be returned, because he believes he was manipulated into signing the deposit and \$50.00 of rent over to the Landlord. The Tenant did say that he realizes that he signed an agreement dated May 1, 2011 that says the Landlord could retain the security deposit and \$50.00 from the rent for cleaning and for damages to the rental unit. The Tenant continued to say there was no move in or move out condition inspection reports completed.

The Landlord said she gave the Tenants the equivalent of one month's rent less the \$50.00 the Tenants agreed to pay for cleaning, she provided a building permit and showed that the work was done in a timely manner; therefore she said she has complied with the Act as she was told to do by the Residential Tenancy Branch.

The Tenant said he believed they should be given some compensation as they did not want to move and the Landlord service them the Notice to End Tenancy before the Landlord had received the building permit.

Analysis

Section 38(4) of the Act says a landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

It is apparent from the testimony and evidence of both the Tenant and the Landlord that there is a written agreement between them authorizing the Landlord to retain the

Tenants' security deposit plus \$50.00 of the April 2011 rent to pay for cleaning and damages to the rental unit. Consequently I find the Landlord has complied with the Act and I dismiss the Tenants' claim to have the security deposit returned.

Section 51 of the Act says a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The Tenant said he does not contest that they received one month's rent free, but their application is for compensation of 2 month's rent in the amount of \$1,900.00 because the Landlord did not have the building permit prior to issuing the Notice to End Tenancy. The Landlord issued the Notice to End Tenancy on March 31, 2011 with an effective vacancy date of May 31, 2011. The Landlord received the building permit on April 8, 2011. The Landlord did issue the Notice to End Tenancy before receiving the building permit, but the building permit was received well before the effective vacancy date. I find from that the Landlord had the building permit prior to the effective vacancy date of May 31, 2011 on the Notice to End Tenancy for Landlord's Use of the Property and that

the Landlord acted in good faith in moving the Tenants out of the unit in order to complete repairs that were needed to the rental unit. Consequently I find the Landlord complied with the Act in giving the Notice to End Tenancy and in completing the repairs to the unit in a timely manner. The repairs were completed in August, 2011 and the Landlord said new tenants moved into the unit in August, 2011. The Tenants request for compensation for 2 month's rent in the amount of \$1,900.00 for the Landlord not complying with the Act and not completing repairs as intended is dismissed without leave to reapply.

As the Tenants were unsuccessful in this matter I further order the Tenants to bear the \$50.00 filing fee for this proceeding, which they have already paid.

Conclusion

The Tenants' application is dismissed without leave to reapply.

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*.

Residential Tenancy Branch