



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlords confirmed that on November 14, 2011 they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on November 8, 2011. I am satisfied that the tenants served this package in accordance with the *Act*. Similarly, I find that the parties served one another with copies of their evidence packages in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to obtain a return of all or a portion of their security deposit from the landlords? Are the tenants entitled to obtain a return of their personal property from the landlords?

Background and Evidence

This tenancy commenced on July 1, 2011. The tenants claimed that they never signed a residential tenancy agreement and that this was a periodic tenancy. The tenants said that they never received a copy of any tenancy agreement from the landlords. The landlords testified that the tenants signed a one-year fixed term tenancy agreement, a copy of which they sent to the tenants. Since I received no copy of the tenancy agreement, I find that this was a periodic tenancy.

The parties agreed that monthly rent was set at \$750.00, payable in advance on the first of each month. The parties agreed that their agreement called for a payment of a \$375.00 security deposit by the tenants. The landlords testified that the tenants never paid this security deposit and they do not hold a security deposit from the tenants. The landlords provided oral and written evidence maintaining that a \$187.50 cheque that the female tenant received from the Ministry of Social Development (the Ministry) for the

security deposit for this tenancy was applied by the landlords, with the agreement of the tenants, to two weeks of rent from June 2011, when the tenants lived in the rental unit without paying rent. The landlords gave written evidence that the tenants were to pay the \$375.00 security deposit in full when the male tenant received his cheque for the security deposit from the Ministry. In written evidence, the landlords claimed that the tenants never paid any portion of the security deposit. At the hearing, the male tenant testified that he gave the landlords \$200.00 in cash which he added to the cash payment he made for July 2011 rent. The female tenant also testified that this cash payment was made towards their security deposit. The female landlord testified that this \$200.00 payment was applied to money the male tenant owed the landlords related to a van. The parties agreed that the tenants did not request nor did the landlords provide any receipts for any of the payments made by the tenants towards this tenancy.

The parties agreed that the tenants paid all of their monthly rent for July, August, September and October 2011. The parties also agreed that the tenants vacated by October 31, 2011 without giving the landlords written notice to end their tenancy or without leaving a forwarding address. The landlords testified that they intend to apply for dispute resolution regarding losses and damage they incurred as a result of this tenancy and for unpaid rent for November 2011.

The tenants also applied for an order requiring the landlords to return personal possessions that the landlords seized when the tenants vacated the rental unit without giving written notice of their intention to do so. The tenants applied for a return of the cat that they considered theirs as a result of their feeding and caring for it at the rental unit. The female landlord testified that the tenants have left with a number of the landlord's belongings in this mostly furnished rental unit.

Analysis – Return of Personal Possessions

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute regarding the personal possessions that both of them were seeking to have returned.

The parties agreed that the tenants would attend the rental unit at 8:00 p.m. on the night of the hearing at which time the parties would transfer their belongings to one another. The landlords agreed to return everything that the tenants were seeking with the exception of the cat. These items included two sets of golf clubs and a number of

boxes that remained at the end of this tenancy. The parties agreed that the cat was being returned by the landlords to the former tenant in the rental unit who was now able to keep the cat with him. For their part, the tenants agreed to return bathroom rugs and a vacuum cleaner that they agreed belonged to the landlords. The landlords maintained that additional items were taken by the tenants, but as the tenants said that they did not have these items, the landlords said that they would pursue recovery of their loss of these items through their own application for dispute resolution.

As the parties agreed to resolve the dispute regarding the return of the tenant's personal possessions, I order that the landlords return all of the tenant's personal possessions (excluding the cat) as soon as possible.

Analysis – Return of Security Deposit

Based on the evidence before me, there is conflicting evidence as to whether the tenants paid a security deposit and, if so, how much was paid.

The landlords have not furnished a copy of the residential tenancy agreement nor have they issued any receipts for this tenancy. The landlords' acceptance of significant funds from the tenants, at least some of which was paid by cash, suggests to me that the landlords did not attend to their responsibilities as landlords when they failed to issue receipts for this tenancy. I also note that the female landlord's oral testimony varied somewhat from the landlords' written evidence. Although she maintained that the tenants did not pay their security deposit, the landlords made no reference in their written evidence to the \$200.00 cash payment that the female landlord agreed the male tenant paid when he made his July 2011 rent payment.

I accept the female landlord's claim that the female tenant's portion of the security deposit was applied by agreement of the parties to rent that the tenants did not pay for their first two weeks of occupancy of the rental unit in June 2011, prior to the formal commencement of this tenancy. However, based on the landlord's failure to provide receipts and the oral testimony of the parties, I find that the male tenant did pay \$200.00 towards his security deposit when he paid his July 2011 rent. For these reasons, I find that the tenants are entitled to a return of \$200.00 plus applicable interest from their security deposit. No interest is payable over this period.

Although the landlords have not yet applied for dispute resolution to recover unpaid rent or other losses, I find that undisputed evidence was presented that there has been unpaid rent for this tenancy owed for November 2011. Section 72(2) of the *Act* allows me to deduct from funds owed by a landlord to a tenant from any rent due to the landlord. As I am satisfied that at least \$200.00 is owing from unpaid rent for November

2011, I order that the \$200.00 monetary award issued for the return of the tenant's security deposit be deducted from the rent that the tenants owed the landlord as of November 1, 2011.

Conclusion

I find that the tenants paid a \$200.00 security deposit for this tenancy. I issue a monetary award in the tenants' favour in the amount of \$200.00, which is to be applied to their unpaid rent owing for this tenancy from November 2011.

In the event that the tenants' personal possessions (excluding the cat) have not already been returned by the landlords, I order the landlords to return these personal possessions to the tenants forthwith.

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: November 30, 2011

Residential Tenancy Branch