



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant MNSD, FF
Landlord MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking a monetary order for compensation for damage to the unit, site or property, compensation for damage or loss under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of double the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by personal delivery on September 16, 2011, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery on September 11, 2011, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Has the Landlord had a loss or damage and if so how much?
4. Is the Landlord entitled to compensation for damage of loss?
5. Is the Landlord entitled to retain the Tenant's deposits?

Tenant:

1. Is the Tenant entitled to recover double the security deposit?

Background and Evidence

This tenancy started on February 1, 2011 as a month to month tenancy. Rent was \$800.00 per month for the unit, but the Tenant's share was \$400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$200.00 on February 1, 2011.

The Tenant said he gave the Landlord written notice to end the tenancy on May 31, 2011 for June 30, 2011 and then he moved out of the unit on June 30, 2011. The Tenant continued to say that no move in or move out condition inspections were done and the unit had damage to it when he moved in. In addition the Tenant said the other tenant who was living with him and who is still living in the unit did some of the damage and he was told he was not responsible for that damage.

The Tenant said he gave the Landlord his forwarding address in writing on August 18, 2011 and he has not received his security deposit back. The Tenant's Advocate said the Tenant is requesting double the security deposit of \$200.00 for a total of \$400.00 as the Act says if a Landlord does not return the security deposit within 15 days of the end of the tenancy and receiving the Tenant's written forwarding address the Landlord is required to pay the Tenant double the security deposit. The Tenant's Advocate also said the Tenant is requesting the \$50.00 filing fee for this proceeding as well.

The Landlord said there was considerable damage to the unit which they submitted photographs, a letter from one of the present tenants and the other present tenant B.D. gave testimony. The present tenants said the Tenant/ Applicant did cause some damage and he left the unit in an unclean state. The photographs also show damage to the rental unit. The Landlord said they did not do a move in or move out condition inspection report so they could not establish the condition of the rental unit on move in, although the Landlords said the unit was in good condition at the start of the tenancy with the Tenant. The Landlord said they have since learned that condition inspection are the responsibility of the Landlord and the reports establish a base line to measure any damage to the rental unit. The Landlord said they have completed condition inspection reports with their new tenants.

The Landlord said they have not done any repairs to the property as of yet so they do not have any receipts or invoices that would prove the damage and the cost to repair the damage.

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The Landlord continued to say they are also claiming for 5 days of rent in July, 2011 as the Tenant did not move out until July 5, 2011 and not as he said that he moved out on June 30, 2011. The Landlord said their monetary claim is as follows:

Retain security deposit	\$ 200.00
Estimated damage	\$ 1,000.00
Unpaid rent	\$ 70.00
Filing fee	\$ 50.00
Total	\$ 1,320.00

Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord's claim against the Tenant's security deposit for damage is extinguished. As a result I dismiss the Landlord's request to retain the Tenants security deposit.

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As the Landlords said they are unable to establish proof of the condition of the rental unit at the start of the tenancy and there is no move out inspection report completed by the Landlord and the Tenant, I find that the Landlord has not established proof that the Tenant is solely responsible for any damaged to the rental unit. Consequently, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

As the Tenant said he has trouble remembering things due to his physical condition and both the Landlord and the Witness said the Tenant moved out on July 5, 2011, I accept

the Landlord and the Witness's testimony and I find that the Landlord has established grounds that the Tenant over stayed the tenancy and the Tenant is responsible for rent up to July 5, 2011 in the amount of \$65.00. I award the Landlord \$65.00 for unpaid rent up to July 5, 2011.

Further, section 38 (1) of the Act says that 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.

And Section 38 (6) says 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.

I find from the Tenant's testimony and written evidence that he did give the Landlord a forwarding address in writing on August 18, 2011. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution by September 1, 2011. Consequently I find for the Tenant and grant an order for double the security deposit of \$200.00 in the amount of \$400.00.



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As the Tenants have been successful in this matter I order the Tenants to recover the \$50.00 filing fee for this proceeding from the Landlord. As the Landlords have not been successful in this matter I order the Landlords to bear the \$50.00 filing fee for their application, which they have already paid.

A monetary order has been issues to the Tenants for the following:

Security deposit	\$ 400.00	
Filing fee	\$ 50.00	
Less unpaid rent	\$ 65.00	
Total		\$ 385.00

Conclusion

A monetary order has been issued to the Tenants' for \$385.00.

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 23, 2011.

Residential Tenancy Branch