



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking a monetary order for compensation under the Act or tenancy agreement, and an order for the Landlord to comply with the Act and tenancy agreement.

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.

Preliminary Matters

During the course of the hearing the Tenants requested leave to provide evidence after the hearing which was inadvertently left out of their original submissions. The documents originally provided by the Tenants were printed double-sided, however, they were not photocopied as double side documents. Therefore, some second pages were missing. As the Landlord did not object to the evidence being submitted after the hearing, I ordered the Tenants to provide the Agent for the Landlord with copies and I allowed this evidence to be sent in to me.

I also note the Tenants had to be cautioned several times and eventually their phone line was muted, due to their constant interruptions during the submissions of the Agent for the Landlord.

Issue(s) to be Decided

Are the Tenants entitled to a monetary order?

Is the Landlord not complying with the Act or tenancy agreement?

Background and Evidence

This tenancy began on August 1, 2009, with the parties entering into a written tenancy agreement.

The parties were involved in a prior dispute resolution hearing on October 15, 2010, over the terms of the tenancy agreement.

The prior dispute involved the interpretation of a rental incentive offered by the Landlord to the Tenants at the outset of the tenancy. The rental incentive was either a free month of rent following the first 13 months of tenancy or a waiver of the \$50.00 a month parking fee. The parties were unclear as to what incentive applied.

The findings of the Dispute Resolution Officer in that hearing included the following:

"I find that the originally contracted 'rental incentive' was the 13th month free of rent (August 2010)."

*"The landlord is **Ordered** to Comply with the terms of the original tenancy agreement – that the 13th month is free of rent and that parking is \$50 per month from the outset of the tenancy."*

*"I **Order** the landlord to Comply with the terms of the original tenancy agreement – that the 13th month is free of rent and that parking is \$50 per month from the outset of the tenancy."*

[Reproduced as written.]

The submissions of the Tenants may be summarized as the Landlord has not provided them with their free month of rent and has charged them retroactively for the parking fees. However, the Tenants testified that they have no vehicle and therefore, should not have been charged for parking in the first place. They want the Landlord to pay them the one month of rent and stop charging them fees which they are not liable for.

The Tenants allege that the ledger provided by the Landlord in evidence is fraudulent, as it contains many items charged to their account, such as late payment fees and parking, which should not have been charged.

The submissions of the Landlord may be summarized as the Landlord interpreted the "Order" of the Officer in the prior hearing to require them to charge the Tenants \$50.00

per month for parking. The Landlord submits the Tenants had a free month of rent credited to them in January of 2011. Nevertheless, I note the records of both parties indicate the Tenants had paid rent to the Landlord in that month.

The Agent for the Landlord testified that although the Landlord believed the Tenants allowed a visitor to use their parking space, they had reversed the parking fees and repaid these to the Tenants. The Landlord has also reversed the late payment fees charged to the Tenants.

In evidence the Tenants had provided a copy of their bank records. I note there is no record of an NSF cheque to the Landlord in these records.

The Landlord submitted a copy of the ledger for the rental unit. The Agent for the Landlord spent a significant period of time during the hearing attempting to explain the numerous debits and credits, and reversals of debits and credits, charged to the Tenants' account. For instance on January 14, 2011, the ledger indicates 18 different parking fees were charged to the Tenants' account, however, 19 different parking fees are credited to the Tenants on March 1, 2011.

The Agent for the Landlord testified that all the late payment fees had been credited back to the Tenants, except for an NSF fee charged for a cheque paid in December of 2010, which was for January of 2011. The Agent testified the Tenants had one cheque returned. However, the Tenants deny this and submit their bank records show the cheque paid to the Landlord in January of 2011 cleared their bank. I note their bank account records do not indicate a cheque of theirs was returned due to insufficient funds in either December of 2010 or January of 2011, or for that matter, in any other month that the records cover.

Another significant instance in the ledger that was addressed by the Agent is that the Tenants paid \$1,130.00 to the Landlord in July of 2010, which is an overpayment of \$391.00, in order to provide the Landlord with a pet damage deposit. There is no memorandum or other note in the ledger setting aside the \$391.00 as a pet damage deposit. The Agent testified he is waiting for the Tenants to come to the office to discuss the pet damage deposit.

As a result of the various transactions between the parties, the Tenants believed they had been credited with one month of free rent. When they did not pay their rent for one month, in November of 2011, the Landlord issued them a 10 day Notice to End Tenancy for unpaid rent. The Landlord alleges there are other charges owed by the Tenants and

this is what they failed to pay. The Tenants paid their rent for the month and the Notice was withdrawn.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find in favour of the Tenants.

I do not find the ledger of the Landlord is a reliable record of the financial transactions in this tenancy. While I do not find the Landlord is fraudulent in this matter, which was alleged by the Tenants, I do find the ledger provided by the Landlord has errors and improperly recorded items. This appears to be either sloppy bookkeeping, or, someone using a software accounting program without proper knowledge or training.

Based on all of the evidence before me, I make the following findings, for the records of the parties:

- The Tenants are owed one free month of rent by the Landlord;
- The Tenants provided the Landlord with a security deposit of \$369.00 on July 20, 2009, and a pet damage deposit of \$361.00 on July 7, 2010;
- The Tenants do not owe the Landlord any late fees, NSF fees, or parking fees as of the date of the hearing; and
- The Landlord was unable to establish the Tenants owe any other amounts to the Landlord as of the date of this hearing.

Therefore, I order that the security deposit of \$369.00 paid on July 20, 2009, and the pet damage deposit of \$361.00 paid on July 7, 2010, must be credited to the account of the Tenants and held in trust for them by the Landlord in accordance with the Act.

I also order that if the Tenants begin using a parking space they are to immediately inform the Landlord of such and the Landlord is entitled to charge them \$50.00 per month for the use of the parking space.

Finally, I order that the Tenants may withhold rent for the month of February 2012, to fulfill the rental incentive required to be given by the Landlord. This will extinguish any dispute as to which month of rent is owed for the incentive.

Conclusion

I find that the ledger of accounts kept by the Landlord for this rental unit is an unreliable record.

I find the Tenants do not owe the Landlord any amounts as of the day of the hearing, and are entitled to withhold rent for the month of February 2012, and that the Landlord must credit the Tenants for the two deposits held and deal with these deposits in accordance with the Act.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 13, 2012.

Residential Tenancy Branch