



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant CNL, MT, MNR, MNDC, MNSD, OLC, RPP, OPT, AS, RR, SS, O
Landlord OPR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

At the start of the conference call the Tenants said they have moved out of the rental unit as of February 21, 2012. The Tenant said as a result of moving out of the rental unit they are amending their application for the monetary claims only and they withdraw the other claims in their application.

The Tenant amended their application to obtain compensation for loss or damage under the Act, regulations or tenancy agreement and for the return of their security deposit.

As well the Landlord said that since he has possession of the unit, his application for an order of possession is no longer an issue and the Landlord said he is withdrawing the application.

The Landlord said service of the hearing documents by the Landlord to the Tenant were done by registered mail on February 6, 2012. The Tenants said they did not receive the Landlord's hearing package. The Tenant said it may have had the wrong address on it. The Landlord did not have a receipt or tracking number for the registered mail package that he said he sent to the Tenants. I do not accept that the Landlord has met the service requirements of the Act, but it is immaterial as the Landlord has withdrawn his application.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on February 6, 2012, in accordance with section 89 of the Act. The Landlord confirmed receiving the Tenants' hearing package.

Issues to be Decided

Tenant:

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

Background and Evidence

This tenancy started on February 25, 2003 as a month to month tenancy. Rent is \$600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$300.00 on February 25, 2003.

During the start of the hearing the Tenant said they moved out of the rental unit on February 21, 2012 because of the 2 Month Notice to End Tenancy and because the services to the unit were terminated. The Tenant said that they have reduced their application to three items because they are no longer in the unit. Item one is the reimbursement of the purchase of a washer and dryer for \$425.75 and for the purchase of three blinds for the unit that costs \$156.77. The Tenant said they spoke with the Landlord about the purchasers and the Tenant said they request reimbursement for the purchases in the amount of \$583.00. The Tenant continued to say this is the amount they wrote on the rent receipt as "repairs to be paid" and that the Landlord has signed the rent receipt. The Tenant said they own the washer/ dryer and the blinds and the items are still in the rental unit.

The second item the Tenants said they are claiming is \$1,000.00 for the emotional distress of begin evicted from a unit that they have lived in for approximately 9 years. The Tenant said they did not know how to calculate this so they thought that a \$1,000.00 was appropriate for the last three months of emotional distress that they have been feeling.

The third item that the Tenants are claiming is the return of their security deposit of \$300.00 plus interest which they paid on February 25, 2003

The Landlord said he was unaware that the Tenants move out of the unit on February 21, 2012. The Landlord said he came to the unit and found it empty and a notice from the utility company to reapply for services. The Landlord said his house had burned down in December, 2011 and that is why the Landlord said he issued a 2 Month Notice to End Tenancy for Landlord's Use of the Property. The Landlord said he is planning to live in the unit. The Landlord continued to say that when the Tenants did not pay the

February rent he then issued a 10 Day Notice to End Tenancy for unpaid rent. The Landlord said the rent is not an issue for him as he understands the 2 Month Notice does provide for compensation to the Tenant that is the equivalent to one month rent or one month of rent free use of the unit. The Landlord said the February rent of \$600.00 is not paid, but he understood the Tenants may take the February, 2012 rent of \$600.00 as compensation for the 2 Month Notice to End Tenancy.

The Landlord continued to say that he did not approve the purchase of the washer and dryer nor did he give the Tenants approval to purchase blinds for the rental unit. The Landlord said he signed the rent receipt without looking at the request for reimbursement for the purchase of the washer, dryer and blinds in the amount of \$583.00 and he said he does not believe that a note on the rent receipt makes the purchases legitimate. The Landlord said these purchases are not his responsibility because a washer /dryer and blinds are not included in the Tenancy Agreement.

With respect to item number three the Tenants' request for \$1,000.00 for emotional distress the Landlord said he did not harass the Tenants in any way and they moved out of the unit earlier than the 2 Month Notice to End Tenancy effective vacancy date of April 1, 2012. The Landlord did say he has been stressed because his house burned down in December, 2011, but he did not harass the Tenants about it.

The Landlord continued to say that the \$300.00 deposit is called a cleaning deposit in the tenancy agreement and therefore it should not be handled as a security deposit.

Analysis

There was much contradictory testimony given by both the Landlord and the Tenant. The Landlord said he did not give approval for the Tenants to replace the washer, dryer and blinds and the washer/dryer and blinds are not part of the tenancy agreement. The Tenant said the Landlord said he would reimburse them if they purchased the washer/dryer and blinds. The Tenant said the rent receipt is proof of the Landlord's approval. The rent receipt does indicate that the Tenant wrote on the receipt they expected payment for repairs, but it does not say what the repairs are and if the Landlord was in agreement with the repairs. I find the Tenants have not established grounds to prove the Landlord agreed to the washer/ dryer and blinds purchase or that he would reimburse the Tenants for the purchases. Consequently I dismiss the Tenants' monetary claim of \$583.00 for the reimbursement of the washer/dryer and

blinds, but it was agreed by both the Landlord and the Tenant that the washer/dryer and blinds are the Tenants property; therefore I **Order** the Landlord to allow the Tenants the right of entry into the rental unit to retrieve the washer, dryer and blinds from the rental unit.

With Regard to the Tenants' monetary claim for \$1,000.00 for emotional distress for being evicted after 9 years of living in the rental unit; I understand the Tenants' concerns and distress, but the Landlord served a proper Notice to End Tenancy so the Landlord could live in the unit. The Landlord said he issued the Notice to End Tenancy because his house burned down in December, 2011 and he was going to live in the rental unit. The Tenants had no corroborating evidence that the Landlord harassed them. The Tenant did say that the fire investigator talked to them about the fire at the Landlord's house and the Tenant said this was stressful for them, but it does not constitute the Landlord harassing them. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I find the Tenants' have not established grounds to prove the Landlord harassed them in the last three months of the tenancy. Consequently I dismiss the Tenants' claim for \$1,000.00 for emotional distress caused by the Landlord's Notice to End Tenancy.

Further I find the Tenants' \$300.00 cleaning deposit (as termed in the tenancy agreement) is the Tenants' security deposit and I Order the Landlord to handle the Tenants' \$300.00 security deposit as stated in the Act.

As the Tenants have been unsuccessful in this matter I order that the Tenants bear the cost of the \$50.00 filing fee for this proceeding which they have already paid.



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Conclusion

The Tenants withdrew all the non monetary claims during the hearing as they have moved out of the rental unit.

The Landlord's application was withdrawn by the Landlord during the hearing.

The Tenants' monetary claims are dismissed with leave to reapply.

The Landlord is order to give the Tenants access to the rental unit to recover their washer, dryer and blinds.

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