



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This is an Application under the Residential Tenancy Act, (the “Act”), by the Tenants for a monetary order for return of their security deposit, a utilities deposit paid, registered mailing costs and the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Are the Tenants entitled to a monetary order for return of their security deposit, a utilities deposit paid, registered mailing costs and the filing fee?

Background and Evidence

The parties agree that the tenancy commenced February 01, 2011 with a monthly rent of \$1,800.00. The parties agree that the Tenants paid a security deposit of \$900.00 at the start of the tenancy and a \$200.00 utilities deposit towards future utility bill costs. The Tenants provided a copy of the tenancy agreement and addendum into evidence. The tenancy agreement addendum signed by the Tenants states that they agreed to pay a “\$200.00 deposit against future bills: hydro, water, and garbage removal”, and to pay 22% of those bills.

The Tenants gave advance notice and moved out of the rental unit on January 31, 2012. The Landlord did not return the security deposit to the Tenants or return all of the utilities deposit. The parties stated that they did a move-in condition inspection at the start of the tenancy. The parties confirmed that they did not do a move-out condition inspection report together when the tenancy ended.

The Tenants stated that they contacted the Landlord several times before the end of the tenancy to propose a move out inspection date, and they stated that they provided the Landlord with several options. The Tenants stated that the Landlord kept making excuses including stating that he had no access to a car. The Tenants stated they offered to pick the Landlord up at his residence which was not far from the rental unit and transport him to the move out inspection, however they stated he declined. The Tenants stated that they provided the Landlord a final opportunity to do the move out

inspection on the last day of the tenancy and again he declined and asked that they send him the keys. The Tenants stated that they requested that the Landlord return their security deposit and utilities deposit within 15 days of the end of the tenancy. The Tenants provided the Landlord with their forwarding address in writing with the keys which they sent by registered mail on February 02, 2012. The Tenants stated that the Landlord sent them a total of \$52.77, from the utilities deposit and security deposit, and withheld the rest. The Tenants filed their Application for dispute resolution on February 27, 2012.

The Landlord stated that he did not have a car and did not know when he would have access to a car, so he was unable to do a move-out inspection with the Tenants on any of the dates they had requested. The Landlord stated that he got a ride to the rental unit with a family member after the Tenants moved out and inspected it himself. The Landlord confirmed that he received the keys and the forwarding address from the Tenants by mail shortly after he sent it on February 02, 2012. The Landlord stated that he responded and provided the Tenants a list of the amounts they owe him. The Landlord stated that he itemized that the Tenants owed him \$1,047.23 for not shampooing the carpets, creating 10 nail holes in the walls, damaging the hardwood in three areas, not replacing a light bulb, scratching the fridge door in three places, scuffing the wall by the pantry which needed to be repainted, spilling shampoo in a drawer, and not paying their portion of the hydro and utility bills (\$127.23) at the end of the tenancy. The Landlord stated that he withheld \$1,047.23 from the security deposit and utilities deposit and returned \$52.77 to the Tenants. The Landlord acknowledged that he has not filed an application for dispute resolution.

The Tenants stated that they did not provide any written consent to the Landlord to make any deductions from their security deposit. The Tenants stated that the Landlord did not refund any of their security deposit. The Tenants agreed at the hearing with the Landlord's request to keep \$127.23 for hydro and utility bills from the \$200.00 utilities deposit advance payment they made at the start of the tenancy. The Tenants stated that they were owed \$72.22 from the balance of the utilities deposit however, they only received \$52.77. The Tenants stated they do not authorize the Landlord to keep the remaining \$20.00 from their utilities deposit. The Tenants stated that they cleaned the rental unit and the carpets in the rental unit and provided copies of a carpet cleaning bill and a cleaning bill into evidence. The Tenants are requesting return of double their security deposit (\$900.00 x 2), double their utilities deposit less the \$127.23 they have authorized the Landlord to keep and the \$52.77 he has returned to them, their registered mailing costs of \$10.68 for providing the Landlord their forwarding address and the keys, and the filing fee.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

I find that the Landlord did not provide a copy of a move-in condition inspection report into evidence, although he claims one occurred. A move-out condition inspection did not occur. The Tenants did not agree in writing, that the Landlord could retain any portion of the security deposit.

Although the Landlord stated that the Tenants owe him money for the condition of the rental unit at the end of the tenancy. There was no evidence to show that the Landlord had applied for dispute resolution, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain all or a portion of the security deposit.

The Tenants testified that they offered the Landlord several opportunities to attend a move-out condition inspection with them, but he declined all of the dates they offered. The Landlord testified that he did not schedule a move-out condition inspection report with the Tenants as he did not have a car and did not know when he would have a car. By failing to offer the Tenants opportunities to perform the outgoing condition inspection the Landlord has extinguished his right to claim against the security deposit, pursuant to section 36(2) of the Act.

The Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit is held in trust for the tenant by the landlord. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the tenant. In the dispute before me, the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

The Tenants are entitled to double the full amount of the security deposit. Section 38(6) of the Act requires that a landlord pay a tenant double their security deposit if the landlord has failed to return the security deposit to the tenant within 15 days of receiving the tenant's forwarding address. I find that the Landlord has failed to return the Tenant's security deposit within 15 days of receiving their forwarding address, and has failed to apply for dispute resolution. The Tenants paid a security deposit of \$900.00, as a result double this amount is \$1,800.00.

The Tenants incorrectly claimed double a utilities deposit for an advance payment they made at the start of the tenancy of a \$200.00 deposit toward utilities bills. The Act does not allow a landlord to charge a utilities deposit and it also does not allow a tenant to claim double the amount for a utilities deposit. The Tenants agreed at the hearing that the Landlord may keep \$127.23 for the utilities bills which they agree they owe to the Landlord, and they requested \$72.77 be returned to them from the overpayment they have made to the Landlord by paying a utilities deposit not required by the Act.

The Landlord provided the Tenants with \$52.77 after the tenancy ended, however, I find that he still owes \$20.00 to the Tenants for the balance of the utilities deposit he charged which was not allowed by the Act.

The Tenants are claiming \$10.68 is claiming for registered mail costs to send the Landlord their keys and forwarding address in writing. The Act does not cover mailing costs spent to deal with tenancy matters such as returning keys or providing a forwarding address when a tenancy ends. As a result I dismiss the Tenants' claim for \$10.68.

As the Tenants have mostly succeeded in their application, I find that they are also entitled to the \$50.00 filing fee paid pursuant to section 72 of the Act.

Pursuant to section 67 of the Act, I grant the Tenants a monetary order for **\$1,870.00**.

Conclusion

I dismiss the Tenants' claim for \$10.68 for registered mailing costs.

I order pursuant to section 67 of the Act, that the Landlord pay the Tenants, the sum of \$1,870.00, comprised of double the security deposit, utilities overpayment, and the filing fee.

The Tenants are given a formal monetary order for **\$1,870.00** and the Landlord must be served with a copy of this order. Should the Landlord fail to comply with this order, the order may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

The order is attached to the Tenants' copy of this decision.

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: March 23, 2012.

Residential Tenancy Branch