



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for a monetary order for double recovery of the pet damage deposit or security deposit.

The 4 tenants named in the applications all attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents personally on February 10, 2012, and despite receiving a notice of hearing from the Residential Tenancy Branch dated March 19, 2012, the landlord did not attend.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to a monetary order for return of all or part or double the amount of the security deposit or pet damage deposit?

Background and Evidence

The tenants testified that this month-to-month tenancy began on August 1, 2011. One of the named tenants moved in at that time and the other tenants at a later date, with the consent of the landlord. Collectively, the tenants paid the landlord a security deposit in the amount of \$750.00 at the outset of the tenancy. Rent in the amount of \$1,500.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. No written tenancy agreement was signed by the parties and no move-in or move-out condition inspection reports were completed. The rental unit is a basement suite and the landlord resides in the upper unit.

One of the tenants testified that a verbal conversation took place between the landlord and 2 of the tenants on September 27, 2011 wherein the tenants told the landlord that the tenants were looking for another place to live. On September 30, 2011 the landlord advised the tenants verbally that they had to move out by October 4, 2011. The landlord returned on October 2, 2011 telling the tenants that they had to move by October 3, 2011 because the rental unit had been re-rented.

Another tenant testified that the landlord and tenants had agreed to a move-out condition "walk-through" to take place on October 3, 2011 at 5:00 p.m. After moving all of the tenants' possessions on October 3, 2011 the tenant awaited the landlord's attendance for the walk-through but the landlord did not show up. The tenant spoke to another person who was in the landlord's residence who advised that the landlord had gone to yoga. The landlord called the tenant later and told the tenant that the landlord completed the walk-through without the tenants present and told the tenant that half of the security deposit would be returned. The landlord told the tenant that the landlord did not want the tenant to come around, and refused to provide reasons for returning only half of the security deposit.

The tenant also testified that the landlord was sent a letter, a copy of which was provided for this hearing, stating that the landlord could return the security deposit directly to the tenant at the tenant's place of employment, and the place of employment is described in the letter. The tenant testified that it's a small town, not a large city, and the landlord knows where that place of employment is and knows that the tenant is employed there; the landlord has attended that place of employment.

All tenants testified that the landlord has not returned any portion of the security deposit to any of the tenants.

Another tenant testified that during the tenancy, upon returning home from work, the tenant discovered that the toilet in the bathroom had flooded after the landlord had repaired it. No one was at home when the flooding occurred. The water from the toilet spread to the dining room and into the bedroom of this tenant. The tenant claims the replacement cost of three pairs of boots and a digital guitar tuner. The tenant provided photographs of the damaged area as well as photographs of the damaged boots and guitar tuner as evidence. The tenant also provided copies of advertisements for replacement of the boots, one being a cost of \$275.00, another \$149.95 and a copy of a bank statement to show proof of purchase of the other boots at \$154.48 on June 18, 2011, and the tenant testified that the boots were hand made in Bali. The tenant also provided a copy of an advertisement showing that the cost to replace the digital guitar tuner is \$22.95. The tenant claims \$500.00 in damages against the landlord. The landlord was told of the damage, but shrugged it off and told the tenant that it was the tenant's problem.

Analysis

Firstly, with respect to the landlord's application, I find that the landlord's failure to attend the hearing must result in a dismissal of the landlord's application. I have heard no evidence with respect to that application and I have made no findings of fact or law with respect to the merits of the landlord's application.

With respect to the tenants' application, the *Residential Tenancy Act* states that a landlord must return a security deposit in full or apply for dispute resolution to keep the security deposit within 15 days of the later of the date the tenancy ends and the date the tenants provided a forwarding address in writing. If the landlord does neither, the landlord must pay the tenant double the amount of the security deposit. In this case, I find that the tenancy ended on October 3, 2011 and the tenants did not provide the landlord with a forwarding address in writing. Therefore, I find that the landlord is not liable for double the amount, but I do find that the tenants are entitled to recovery of \$750.00.

With respect to the balance of the tenants' application, in order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. that the damage or loss exists;

2. that the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, I accept the testimony and evidence of the tenants and I am satisfied that the damage or loss exists. The photographs show the damaged items, and I find that the landlord's failure to call a plumber or complete repairs to the toilet have resulted in the flood in the basement suite. The tenants asked the landlord for compensation for the damaged items, but the landlord has refused. The *Act* states that a landlord must provide and maintain a rental unit in a state of decoration and repair that complies with housing standards provided by law and make it suitable for occupation by a tenant. The landlord had an obligation to make repairs to the toilet, and did so, but did not do so in such a fashion that it prevented the toilet from flooding the basement suite. The tenant has provided evidence of replacement of those items, and has made a claim for a lower amount than proven. I further find that the tenants have mitigated any loss associated with the problems with the toilet by calling the landlord to effect repairs rather than complete repairs themselves. I am satisfied that the tenant has established a claim in the amount of \$500.00 for damaged items.

In the circumstances, I find that the tenants are collectively owed \$750.00 and one tenant is entitled to damages in the amount of \$500.00. Therefore, two monetary orders will be provided to the tenants accordingly. Since the tenants have been successful with the application before me, the tenants are also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$800.00.

I further grant a monetary order in favour of one of the tenants, KP, in the amount of \$500.00.

These orders are final and binding on the parties and may be enforced.

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: April 13, 2012.

Residential Tenancy Branch