



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for an order compelling the landlords to return double their security and pet deposits and a cross-application by the landlords for a monetary order and an order authorizing them to retain the security and pet deposits. Both parties participated in the conference call hearing.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?
Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on April 15, 2011 and was set to continue for a fixed term ending on April 15, 2012. They further agreed that rent was set at \$1,400.00 per month and that the tenants paid a \$700.00 security deposit and a \$500.00 pet deposit.

The parties agreed that the tenants gave the landlords verbal notice that they would be ending their tenancy one month early, on March 15, 2012. The landlords immediately began advertising the rental unit and would give the tenants verbal notice that they wished to show the unit to prospective tenants, but were frequently denied entry as the tenants felt that the notice was inadequate, the unit was not ready to be shown or the showing interfered with their daughter's nap time. The landlords testified that they were unable to re-rent the unit until May 1 because they were unable to show the unit until the tenants vacated. They seek to recover \$1,400.00 in lost income.

The landlords seek to recover \$150.00 as the cost of the tenants' half of the utilities for the one month period after the tenants vacated. The parties agreed that the tenants were responsible to pay for 50% of the utilities. The landlord provided no invoices showing the actual cost of utility consumption during the period in question.

The landlords seek to recover \$200.00 as the cost of stretching the carpet at the end of the tenancy. They claimed that the carpet had rolls in it, caused by the activities of the tenants' large dog. The tenants provided photographs showing that when they first moved into the rental unit, the carpet already had several rolls in it.

The parties agreed that the landlord was entitled to recover \$217.85 as the cost of cleaning the carpet at the end of the tenancy.

The tenants seek an award of double their security and pet deposits. The parties agreed that the tenants vacated the unit on March 15, 2012 and that they provided their forwarding address in writing on March 18, 2012. The landlords explained that they responded to the March 18 letter by sending the tenants a letter explaining the deductions from the deposits and stated that they were unaware that they had to file a formal application to retain the deposits.

Both parties seek to recover the \$50.00 filing fees paid to bring their applications.

Analysis

First addressing the landlords' claim, I find that the tenants were in a fixed term tenancy and were not legally entitled to end the tenancy prior to the end of the fixed term. Although section 45(3) of the Act permits tenants to end a tenancy early when the landlord has breached a material term of the tenancy, it permits this action only where the tenant has complied with certain written notice requirements which were clearly not followed in this instance.

I find that the landlords acted reasonably to minimize their losses by immediately advertising. While the landlords failed to provide 24 hours written notice to the tenants to show the unit, I find that as the landlords were attempting to fill the balance of the tenants' fixed term, the tenants should have been more cooperative in allowing them to show the unit. For these reasons, I award the landlords \$1,400.00 in lost income for the last month of the fixed term.

I dismiss the claim for 50% of the utilities for the last month of the fixed term as the landlords have not provided invoices showing the actual cost of the utilities, without which I am unable to determine the tenants' share.

I also dismiss the claim for the cost of stretching the carpet. I find that there were rolls in the carpet at the beginning of the tenancy. While there may have been more rolls at the end of the tenancy, I find that the carpet would have needed to be stretched in any event and I see no reason why the tenants should have to bear the cost.

I award the landlords \$217.84 which the parties agreed they were entitled to receive.

Turning to the tenants' claim for double their security and pet deposits, section 38(1) of the Act provides that the landlords must return the security and pet deposits or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlords received the tenants' forwarding address on March 18 and I find that they failed to repay the deposits or make an application for dispute resolution within 15 days of receiving the forwarding address. Despite the fact that they were not aware of their obligation under the Act, I find that they are therefore liable under section 38(6) which provides that the landlords must pay the tenants double the amount of the security and pet deposits.

The tenants paid a total of \$1,200.00 in deposits. In the letter dated March 18, the tenants stated that they agreed that the landlords could deduct the cost of carpet cleaning if they provided a copy of the receipt. The landlords provided a copy and I find that the \$217.84 cost of carpet cleaning must be deducted from the deposits before they are doubled. I award the tenants \$1,964.32, which represents double the \$982.16 balance of the deposits after the cost of carpet cleaning is deducted.

As both parties have enjoyed some success, I find it appropriate that each bear the cost of their own filing fees.

Conclusion

The landlords have been awarded \$1,617.84 and the tenants have been awarded \$1,964.32. Setting these awards off as against each other leaves a balance of \$346.48 owing by the landlords to the tenants. I grant the tenants a monetary order under section 67 for \$346.48. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 25, 2012

Residential Tenancy Branch