



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order and an order permitting them to retain the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in September 2011 at which time a \$500.00 security deposit was paid and that the tenants vacated the rental unit on February 28, 2012. They further agreed that the tenants gave written notice on February 6 that they were ending their tenancy on March 1, 2012. Upon receiving the tenant's notice, the landlords immediately advised the tenants that their notice could not take effect earlier than March 31 and requested that the tenants pay rent for the month of March. The tenants provided the landlord with a cheque post-dated for March 1.

The landlords testified that they arranged to show the rental unit on February 28 and when they arrived, they saw that the unit was empty. The parties agreed to conduct a condition inspection of the unit on that date. The landlords asked the tenants to return the keys to the unit and the tenants responded that if they returned the keys, they expected their March rental payment to be returned to them. The landlords returned the post-dated cheque, presumably acting on advice which they received from the Residential Tenancy Branch. The landlords maintain that the tenants should be obligated to pay rent for the month of March because they did not give sufficient notice to end the tenancy.

The landlords claimed that the tenants broke a window during the tenancy and provided an estimate showing that it would cost \$134.40 to repair the window. The landlords provided a copy of the condition inspection report showing that at the beginning of the

tenancy, no damage to the window was noted. The tenants claimed that the window was broken at the beginning of the tenancy.

The landlords also seek to recover the \$50.00 filing fee paid to bring their application. The tenants claimed that the landlords had advised that they would be paying the filing fee but the landlords stated that they had simply told the tenants that a filing fee would be paid to bring the application and that they did not intend to suggest that they would not seek recovery of the fee.

Analysis

The Act requires that tenants provide one full months' notice in order to end their tenancy. Because the tenants did not give notice until February 6, they could not have ended the tenancy prior to March 31. Section 53(1) of the Act provides that incorrect effective dates are deemed to be changed to comply with the Act.

Because the tenancy was set to end on March 31, the tenants were entitled to retain possession of the unit until that date. If the tenants had voluntarily surrendered possession prior to that date, I would have found that the landlord was entitled to the loss of income experienced in the month of March. However, in this case, the tenants did not voluntarily surrender possession. Rather, the landlords demanded that they return the keys and when the tenants objected and stated that they wished to retain possession until the end of March if they were paying the rent for that month, the landlords refused to allow them to do so. I find that because the landlords deprived the tenants of possession of the unit, they are not entitled to rent for the month of March. Accordingly, I dismiss the claim.

Turning to the claim for the cost of repairing the broken window, I find on the balance of probabilities that the condition inspection report completed at the outset of the tenancy accurately represented the condition of the rental unit at that time. I find that the tenants must be held liable for damage which occurred during their tenancy and I find that the damage in question is beyond what may be characterized as reasonable wear and tear. I award the landlords \$134.40.

I find insufficient evidence to show that the landlords made a promise that they would not seek recovery of the filing fee. As the landlords have been partially successful in their claim, I find it appropriate that they recover one half of the filing fee and I award them \$25.00.

Conclusion

The landlords have been awarded \$159.40. I order them to retain this sum from the \$500.00 security deposit and I order them to return the balance of \$340.60 to the tenants forthwith. I grant the tenants a monetary order under section 67 for \$340.60. 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: May 10, 2012

Residential Tenancy Branch