



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on April 5, 2012 for:

1. An Order for the return of double the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on March 29, 2012 for:

1. A Monetary Order for unpaid rent – Section 67;
2. A Monetary Order for compensation- Section 67;
3. An Order to retain all or part of the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on October 31, 2011 on a fixed term to October 31, 2012. The Tenants moved out of the unit on March 1, 2012. Rent in the amount of \$1,500.00 was payable monthly and at the onset of the tenancy the Landlord collected \$750.00 as a

security deposit. Both a move in and move out inspection was conducted between the Parties however the Tenants did not receive a copy of the move-out condition report. The Tenants provided their forwarding address on March 19, 2012.

The Tenant states that in mid February 2012, the Landlord twice asked the Tenants to move out of the unit by the end of February 2012. The Tenant states that they agreed to move out of the unit and that since they required time to find another unit the Landlord also agreed to allow them to store their belongings in the Landlord's locker until they found another unit. The Tenant states that they found a unit for March 15, 2012 but in order to maintain their agreement to move out by the end of February they moved in with a friend for the next two weeks until they could move into the rental unit. The Tenants claim return of double the security deposit. The Tenant does not dispute the Landlord's claim for the following amounts and agree that these amounts should be deducted from the security deposit:

- \$172.00 for hydro
- \$60.00 for carpet cleaning; and
- \$50.00 for a building fine.

The Landlord states that she is not seeking a monetary order for unpaid rent. The Landlord states that the Tenants were not asked to move out of the unit. The Landlord states that the Tenants had a third party living in the unit and that the Tenants did not seek the Landlord's permission for this. The Landlord states that the Tenants were fighting with this 3rd party and that this third party moved out of the unit on February 16, 2012 making it difficult for the Tenants to pay the full rent. The Landlord argues that this is the reason the Tenants moved out of the unit without any written notice to the Landlord. The Landlord states that the Tenants told her on February 19, 2012 that they would be moving out of the unit by February 29, 2012 and that on February 28, 2012, the Tenant informed the Landlord that the move-out would occur on March 1, 2012.

The Landlord states that she was called several times due to the fighting between the Tenants and the third party and a lot of time was spent by the Landlord's trying to resolve the fights. The Landlord agrees that the Tenants were given permission to store their belongings until the middle of March and states that at the time of the agreement, the Landlord did not tell the Tenants that there would be a charge for the storage but did also not tell them that they could store their belongings for no charge. The Landlord states that the storage claim was only made with the application. The Landlord states that no claim is being made for unpaid rent and that immediately after the Tenants moved out of the unit, the unit was placed for sale. The Landlord states that the tenancy agreement provides that if the Tenants move out of the unit without a month's notice that the security deposit is not refundable. On this basis the Landlord claims retention of the full security deposit. The Landlord states that the security deposit would have been returned to the Tenants but that the Landlord believed that the Tenants would not provide the third party with a return of its share of the deposit and that the Landlord was trying to be fair to all parties. The Landlord seeks retention of the entire security deposit and compensation for the costs for costs of the dispute, including the Landlord's time and gas costs and postage costs for service.

The Tenant states that the third party moved into the unit on November 1, 2011 and that this 3rd party paid the Tenants half of their security deposit. The Tenant states that they tried to return the 3rd parties portion of the security deposit to the 3rd party but that this person did not agree to a prior deduction of the costs noted above as undisputed costs to the Landlord.

Analysis

Section 5 of the Act provides that landlords and tenant may not avoid or contract out the Act and that any attempt to do so is of no effect. Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security

deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

Although the Landlord relies on the tenancy agreement to claim a forfeiture of the security deposit upon not providing sufficient notice to end the tenancy, I find that this part of the contract is in conflict with Section 38 of the Act and is therefore of no effect. However, as the Landlord made an application for dispute resolution claiming against the security deposit within 15 days of receiving the Tenant's forwarding address, I find that the Tenants are not entitled to return of double the security deposit and I dismiss the Tenants' application.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established. It is undisputed that the Tenants did not provide a month's notice to move out of the unit however the Landlord was clear that no unpaid rent was being claimed. Further, given the undisputed evidence that the Landlord placed the unit for sale immediately after the Tenants moved out of the unit, I find that the Landlord failed to show any losses resulting from the Tenants' end of the tenancy.

Given the Landlord's evidence that at the time that the Landlord agreed the Tenants could use the storage and that the Tenants were not told at the time of the agreement that there would be a charge for storing their belongings, I find that the Tenants are not liable for storage costs and I dismiss this part of the Landlord's claim.

As there is no provision in the Act to allow for an award or recovery of costs associated with the dispute process beyond the filing fee, I dismiss the claims of the Landlord in relation to such costs. Given the agreement of the Tenants, I find that the Landlord has

substantiated its claim to \$172.00 for hydro, \$60.00 for carpet cleaning and \$50.00 for a building fine for a monetary entitlement of **\$282.00**. As the Landlord has been largely unsuccessful with its claim, I find that the Landlord is not entitled to recovery of the \$50.00 filing fee. As the Landlord still holds the security deposit, I order the Landlord to retain \$282.00 from the security deposit plus interest of \$750.00 and to return the remaining amount of \$468.00 to the Tenant's forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$468.00**. If necessary, this order may be filed in the Small Claims 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: June1, 2012.

Residential Tenancy Branch