



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call regarding applications made by the landlords and the tenants.

A hearing had been convened on April 25, 2012 wherein the tenant was awarded a monetary order in the amount of \$1,350.00 for return of a security deposit, which also included recovery of the filing fee. The landlords did not attend that hearing, and made an Application for Review of the April 25, 2012 decision. The Dispute Resolution Officer who considered that review application suspended the decision and order until a review hearing has been conducted. The parties were sent a notice of hearing directly from the Residential Tenancy Branch scheduling the review hearing for June 13, 2012. The tenant and both landlords attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. During the course of the hearing, the landlords advised that another hearing was scheduled to be heard on June 25, 2012 under file number 791209 wherein the landlords had applied for a monetary order, an order to keep the security deposit and recovery of the filing fee, and requested that the hearings be joined. The application was allowed, and the joined hearing was conducted on June 25, 2012 as a continuation of the evidence and testimony provided on June 13, 2012.

The tenant was assisted by 2 different interpreters for the two days of the hearing.

During the course of the hearing it was determined that the tenant did not provide an evidence package to the landlord. All evidence and testimony, with the exception of that evidence package, has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to a monetary order for return of the security deposit or pet damage deposit?
- Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The first tenant testified that this fixed term tenancy began on May 12, 2011 and was to expire on April 10, 2012. Rent in the amount of \$1,300.00 per month plus \$100.00 for heat and water were payable in advance on the 10th day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,300.00. A copy of the tenancy agreement was provided in advance of the hearing which states that the tenancy “begins on the (blank) day of May, 2011 for a fixed length of time, one year, ending on 10 April, 2012.” The document also shows that rent in the amount of \$1,400.00 per month is payable on the first day of the rental period, and again the options are left blank and there is no indication as to when each day, week or month the rental period falls.

The tenant further testified that the tenant’s family needed to move from the rental unit prior to the expiry of the fixed term due to noises caused by the landlords completing renovations in the building, although the tenant also stated during cross examination that the tenant had told the landlords that the house was too small. The tenants moved from the rental unit on January 23, 2012 and provided the landlords with a forwarding address in writing by registered mail on March 9, 2012 and provided a tracking number assigned by Canada Post and an address it was sent to. Also provided is a copy of the tracking print-out issued by Canada Post which shows that the mail item was incorrectly re-routed to Halifax, which is not the city nor in the Province at which the landlords reside or carry on business.

The other tenant testified that the landlords are accusing the tenants of moving out due to suite size, but it was really the construction, a pipe breaking and poor treatment that caused the tenants to leave. The tenant had complained about the construction noise, but the landlord told the tenant to go for a walk. Further, it took 10 days to get the pipe fixed. The tenants couldn’t put up with the noisy, shaky construction. The house is old and falling apart, and the situation was not livable due to dust, noise all day, and the sounds of construction. The tenant’s son was coughing due to the dust.

The tenants claim double the amount of the security deposit in the amount of \$2,600.00 and recovery of the \$50.00 filing fee for the cost of this application.

The first landlord testified that the landlords collected a full month's rent for a security deposit because the tenants had no furniture or television.

The tenant was almost threatening when the tenant requested the security deposit back after moving out. The landlord told the tenant that the tenancy agreement was for a fixed term but if the landlord was successful in re-renting the unit and there were no damages, the security deposit would be returned, and the tenant agreed. There were no damages in the rental unit, but the landlords were not successful in re-renting.

The tenants had claimed that the house was too small, but had been living in a hotel prior to renting, and the landlord told them at the time it would be too small for a family of 4 but they still wanted to rent it. Then they found a bigger place and wanted out of the fixed term tenancy.

During the course of the tenancy a pipe broke and the tenants' rental unit was affected requiring dryers to remain in the rental unit for 2 days, not 10 days as stated in the tenants' evidence.

Construction started in the rental building on January 20, 2012, but the tenants moved out prior to that, on January 17, 2012. The tenant saw the landlord working on the building when attending to request the security deposit.

The other landlord testified that the landlords never received the tenants' forwarding address.

The landlord also testified that the tenant had told the landlord that the house was too small for the family and wanted to leave earlier than the end of the fixed term. The tenant requested the security deposit back and the parties agreed that if the rental unit was re-rented, the security deposit would be returned. The landlord asked the tenant to sign an agreement to that effect, but the tenant refused.

The landlords placed an advertisement on Craigslist, a free internet advertising website on January 29, 2012, but it was advertised for \$50.00 per month more than the tenants had been paying. The landlord explained that it had originally been advertised prior to this tenancy at \$1,500.00 per month but the tenants negotiated with the landlords who agreed to reduce the rent to \$1,400.00 per month. The landlords also placed advertisements in Persian stores around the area prior to that. Advertisements were also placed at Safeway, Save-on Foods, Super Store, and 6 Persian stores. No advertisements were placed in newspapers because the landlords have found that that method is not successful. These tenants were found by the advertisement in the Persian store. The rental unit was re-rented for April 1, 2012.

The landlords claim \$2,800.00 for February and March, 2012 rent and \$50.00 for recovery of the filing fee for the cost of this application.

Analysis

I have reviewed the tenancy agreement, and I find that the parties entered into a fixed term tenancy to end on April 10, 2012. I further find that the parties agreed to rent in the amount of \$1,400.00 per month. The tenant testified that the tenancy began on May 12, 2011, which was not disputed by either landlord, and I therefore find that rent was due on the first day of the rental period which falls on the 12th day of the month.

I further find that the tenants vacated the rental unit prior to the end of the fixed term without providing any written notice to the landlords. The tenants claim that the rental unit was not livable due to construction dust and noise, but I find that the tenants have failed to establish that fact. In a situation where a landlord has failed to comply with the tenancy agreement, a tenant may be able to establish justification to giving less than one month's written notice, but in this case, I have no evidence before me to satisfy me that the tenants provided any written notice to the landlords or had any justification to do so.

Having found that the period of the tenancy falls on the 12th day of the month, and considering that the landlords re-rented the rental unit on April 1, 2012, I find that the landlords are entitled to a monetary order in the amount of \$1,400.00 for rent from February 12 to March 11, 2012 and a pro-rated amount of rent for March 12 to 31, 2012 in the amount of \$903.22.

With respect to the security deposit, it is clear in the evidence that the landlords did not receive the tenant's forwarding address even though the tenants sent it by registered mail; the mail was inadvertently re-directed to another city and Province. The *Act* states that if a landlord fails to return a security deposit within 15 days of the later of the date the landlord receives the tenant's forwarding address in writing and the date the tenancy ends, the landlord must pay the tenant double the amount of the security deposit. The landlords testified to learning of the tenants' forwarding address through this dispute resolution process, and I accept that testimony in the circumstances. Therefore I find that the tenants are not entitled to double recovery of the security deposit, but are entitled to recovery of it, which I apply to the monetary order granted to the landlords.

The *Residential Tenancy Act* states:

82 (3) Following the review, the director may confirm, vary or set aside the original decision or order.

I hereby order that the original order made on April 25, 2012 is hereby set aside.

In summary, I grant a monetary order in favor of the landlords in the amount of \$2,303.22 to be set off by the security deposit in the amount of \$1,300.00, for a total monetary order in favor of the landlords in the amount of \$1,003.22.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees for the cost of these applications.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favor of the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,003.22.

This order is 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: July 05, 2012.

Residential Tenancy Branch