



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 in repose to the tenants application for an Order for the return of double the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The landlord provided documentary evidence to the tenant in advance of this hearing however the tenant did not provide documentary evidence to the landlord. The tenant's documentary evidence has therefore not been considered in this decision. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to the return of their security deposit?

Background and Evidence

Both parties agree that this tenancy was due to start on March 15, 2012. Rent for this unit was agreed at \$1,300.00 per month payable on the first day of each month in

advance. The tenants paid a security deposit of \$650.00 and a pet deposit of \$650.00 on March 01, 2012.

The tenant attending testifies that she believes her lawyer sent the landlord the lawyer's office address as a forwarding address for the tenant. The tenant agrees she has no evidence to support this. The tenants seek to recover double their security and pet deposits to the sum of \$2,600.00.

The tenant testifies that they had agreed to move into the unit on March 15, 2012 and the landlord did allow the tenants to move some items into the unit early and gave the tenants access to the unit to do this. The tenant testifies that they were of the understanding that the landlords would have the unit cleaned and the previous tenant's garbage would be removed. The tenant testifies that they did agree to take a couple of loads of the garbage to the dump for the landlord but later found there were about 10 loads which the dump wanted them to sort out first. The tenant testifies that they obtained some quotes for this work and then called the landlord to inform them.

The tenant testifies that the previous tenant had left their cat and fish at the unit. The tenant states they had to find homes for them even though it was not their responsibility.

The tenant testifies that the landlord would not let the tenants have front door keys so they could not use the front door. The landlord did have a touch entry pad fitted to the side door and did give the tenants the code for this pad. The landlords mother in law did have the keys to the unit.

The tenant testifies that the house had cat urine on the upstairs carpets and there was human urine around the house in kitchen cupboards and in the bathroom. A neighbour told the tenants that she had seen the previous tenant urinating all over the house. The tenant testifies that she had to clean the unit before she could move in. The tenant testifies that they had to clean cat and human urine from the walls along with semen stains. The bathroom was cleaned of human urine and the bathroom closet was

cleaned of cat urine. The carpets were cleaned, a railing was fixed at the top of the stairs, the floors were cleaned and polished, the back yard was power raked and a back fence was repaired. The tenant testifies that this work took 40 hours between the 3rd and 7th of March, 2012 and the tenants seek to recover the sum of \$20.00 per hour to a total sum of \$800.00.

The tenant testifies that they found a hole in a drain which leaked into the cupboard. The tenant states she called the landlords and asked them to repair this however the male landlord stated to call the tenants names saying they were idiots and useless. The tenant states the male landlord then asked the tenants to go through the previous tenants' garbage and pick out anything of value.

The tenants seek to recover their first month's rent of \$1,300.00 as the tenants claim the landlords failed to provide a rental unit that was fit for occupation.

The landlords dispute the tenants' claims. The landlords testify that they have not received a forwarding address from the tenants or the tenants' lawyer.

The landlords testify that they let the tenants move their belongings into the unit a week early as one of the tenants told the landlords she had surgery around the move in date. The landlords testify that the tenancy agreement did not start until March 15, 2012 and they allowed the tenants' access to the unit on March 01, 2012. The landlords' testify that they had the house painted (receipt provided), floors were washed and new rugs were put downstairs and in the master bedroom. The landlord testifies that the tenant also wanted a new rug in the downstairs bedroom and had agreed to pay for that work as the landlord did not intend to fit rugs in that room. The landlords dispute the tenants claim that there was urine on the walls as the walls had been painted. The landlord LM testifies that he was staying in the unit to carry out work from March 03 to March 05 and the tenant was not at the unit cleaning during any of these days.

The landlords testify that on March 10, 2012 all the garbage from the previous tenants was removed and the landlord paid a company to do this work and has provided a copy of the receipt. The only items left in the unit were a table and a cot the landlord had been sleeping on.

The landlords testify that the tenant knew the previous tenant had a cat but later the tenant informed the landlord that her children were allergic to cats. The landlords testify that the house was in a liveable condition and the tenants ended the agreement without giving the landlord time to rectify any of her concerns before the start date of the tenancy.

The landlords testify the tenants would have been given a front door key on March 15, 2012 and they were just given the code to the side door so they could move some belongings into the unit prior to the start date of the tenancy. The unit was re-rented for April 01, 2012 to a friend of these tenants who is more than happy with the condition of the unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 38(1) of the *Act* says that a landlord (or the person acting as his agent) has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution.

The tenants have presented no evidence to show that they sent their forwarding address in writing to the landlords; therefore I find the tenants' application to recover double the security deposit is premature. This section of the tenants claim is therefore dismissed with leave to reapply.

With regard to the tenants claim for a monetary Order for money owed or compensation for damage or loss; When one party's word contradicts the word of the other party the

person making the claim must provide corroborating evidence to meet the burden of proof. It is my decision that the tenants have provided insufficient evidence to show that the rental unit was left in a condition that was unfit for occupation resulting in the tenants ending the tenancy before the start date agreed on the tenancy agreement. I further find the tenants have provided insufficient evidence to show that they cleaned the unit for 40 hours or that the tenants had notified the landlords that they were unhappy about the condition of the unit when they started to move their belongings into the unit. Consequently, I find the tenants have failed to meet the burden of proof in this matter and this portion of the tenants claim is denied.

As the tenants have been unsuccessful with their claim I find the tenants must bear the cost of filing their own application.

Conclusion

The tenants' application to recover the security and pet damage deposit is dismissed with leave to reapply.

The tenants' application for a Monetary Order for money owed or compensation for damage or loss is dismissed without leave to reapply.

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: June 19, 2012.

Residential Tenancy Branch