



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Preliminary Issues

At the outset of the hearing the Landlord advised she received only one document from the Tenants which was the Notice of Dispute Resolution Hearing. The Landlord stated that after receiving this document she contacted the *Residential Tenancy Branch* and they forwarded her a copy of the Tenants' application for dispute resolution following which the Landlord submitted her evidence.

I informed the Landlord that she was at liberty to request that this application be dismissed however I could dismiss it with leave to reapply which meant it would only delay the hearing if the Tenants filed another application. The Landlord advised that she wished to proceed with the hearing today and confirmed she was satisfied that she had time to submit the evidence she wished to rely upon.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of their security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order?

Background and Evidence

The parties agreed they entered into a written month to month tenancy that began on September 12, 2011 and ended April 30, 2012. Rent was payable on the first of each month in the amount of \$1,200.00 and on August 29, 2011, the Tenants paid a total of \$1,200.00 for deposits which consisted of \$600.00 security deposit and \$600.00 as the pet deposit. The parties completed the move in condition inspection report on September 12, 2011 and the move out condition inspection report on May 1, 2012.

The Landlord submitted a copy of the condition inspection reports into evidence and pointed to the note at the bottom of page one of the report which indicates she asked for the Tenants' forwarding address twice and they refused. She acknowledges receiving their address on May 4 or 5th and that it was received via text message.

The Tenants initially stated they provided their forwarding address to the Landlord within a day of their tenancy ending and then later confirmed they did not provide it until May 4 or 5th by text message.

The Landlord confirmed she has not returned the Tenants deposits and asserted that they provided her permission, in writing, to retain the deposits to set off against the \$2,190.00 she was owed in accumulated unpaid rent. The Landlord pointed to page two of the move out condition inspection report in evidence which states:

(4) Tenants agree that security & pet deposits to be used towards unpaid rents owed to landlord.

The Landlord further clarified that she had decided not to seek further monetary compensation from the Tenants as she was aware of their financial situation and she was doubtful she would ever collect on any award.

Tenant C.M. acknowledged that there was rent owed to the Landlord and claimed that he does not recall seeing the second page of the condition inspection report and does not recall agreeing to have the Landlord keep their deposits.

Tenant J.H. submitted that she recalls their discussion with the Landlord and she said there were no damages and they were squared off with the Landlord for rent owed because the Landlord had agreed to lower the rent and she told them to pay her what they could.

The Landlord confirmed she had lowered the rent to \$1,000.00 in January 2012 as the Tenants could not afford the full amount.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. In this case the Tenants have the burden to prove the Landlord did not disburse the security deposit in accordance with section 38 of the Act.

I favor the evidence of the Landlord, who stated the Tenants agreed in writing that she could retain the security and pet deposit to offset part of the accumulated unpaid rent. I favor the Landlord's evidence over the Tenants' evidence in part because C.M. claims not to recall the agreement even though he recalls signing the document and J.H. argued they were "squared off with the Landlord".

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Landlord's explanation that the Tenants agreed to sign over their deposits to offset some of their debt and agreed to this by signing the move out condition inspection report, as supported by her evidence, to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find the Landlord retained the security and pet deposits in accordance with section 38(4)(a) of the Act. Accordingly I find the Tenants application has no merit and it is hereby dismissed.

Conclusion

I HEREBY DISMISS the Tenants' application.

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 26, 2012.

Residential Tenancy Branch