



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, MNDC, FF
 Tenants: MNSD, MNDC

Introduction

This hearing dealt with the cross Applications for Dispute Resolution with each party seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and interpreter and all three tenants.

The landlord's Application indicated unpaid rent in the amount of \$1,400.00 and compensation for damage to the rental unit in the amount of \$2,000.00 but at the hearing the landlord provided a list of damage and cleaning required totalling more than \$5,000.00 and rent totalling more than \$1,900.00.

As the landlord had provided no evidence that clarified or identified how the claim was determined prior to the testimony provided in the hearing I find to amend the landlord's Application to include these higher amounts would be prejudicial against the tenants and I did not allow the landlord to amend the Application.

As such, I required the landlord to identify which items they had listed in testimony they wished to pursue in this Application and they would be at liberty to file a separate Application to claim the other items not included in this hearing. The items not included in this hearing are the landlord's claim to replace a refrigerator; carpet replacement; and any rent or overholding charges in excess of \$1,400.00.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on April 1, 2009 as a month to month tenancy for rent, at the end of the tenancy, of \$1,460.00 due on the 1st of each month and a security deposit of \$725.00 and a pet damage deposit of \$725.00 paid on March 24, 2009.

Both parties provided copies of the following notices to end tenancy:

- A 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 28, 2012 with an effective vacancy date of May 31, 2012 – no reason is indicated on the second page of the notice as to what use the landlord intended for ending the tenancy; and
- A 10 Day Notice to End Tenancy for Unpaid Rent dated April 4, 2012 with no effective date provided and no signature from the landlord stating the tenant had failed to pay rent of \$1,400.00 due on April 1, 2012 and utilities of \$60.00 for which a written demand had been made on April 1, 2012.

The parties agreed the tenants did not pay the rent for April 2012 and that the landlord had not provided any compensation to the tenants equivalent to one month's rent for receiving the 2 Month Notice to End Tenancy as is required under Section 51 of the *Act*.

The landlord, through the interpreter, that a move in condition inspection and a move out condition inspection were not completed but the landlord's interpreter testified the tenants had:

- Broken several floor tiles in the bathroom – costing \$900.00 to repair;
- Damaged the garage door – costing \$627.00 to repair;
- Failed to return keys – costing \$50.00 to replace locks;
- Required the landlord to remove items to the landfill - Landfill fees for garbage left behind - \$27.00; and
- Failed to clean the rental unit – general cleanup cost \$320.00.

The tenants submit that all of the damage listed by the landlord existed at the start of the tenancy; that they returned the keys to the landlord on May 11, 2012 when they conducted the move out inspection and returned the keys to the landlord; after they had thoroughly cleaned the rental unit.

The landlord submits the tenants had paid rent for April 2012 and then put a stop payment on the cheque. The tenants submit that they advised the landlord that they would be leaving at the end of April 2012 in accordance with the 2 Month Notice issued by the landlord on March 28, 2012.

The tenants also submit that they cancelled the cheque because it was agreed with the landlord that this would be the compensation the tenants were entitled to because the landlord had issued them a 2 month notice.

The landlord acknowledged that they had not provided the tenants with the compensation because the tenants had not paid the rent for April 2012. In addition the landlord states the tenant overstayed in the rental unit until May 11, 2012 and the landlord is owed an additional \$450.00.

The tenants testified that late in April they advised the landlord that they would need 5 extra days to clean the unit and the parties agreed the landlord could deduct \$243.33 for the additional days from the security deposit. The tenants submit they still agree to this deduction.

Both parties agree the tenants provided the landlord with their forwarding address on April 13, 2012. The landlord filed their Application to claim against the security deposit on June 7, 2012.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Regardless of any requirements under the *Act*, the landlord has provided absolutely no evidence of the condition of the rental unit at the start of the tenancy or at the end of the tenancy or any evidence that the landlord has suffered any financial loss (i.e. no receipts) and since the tenants dispute the landlord's claims as to the condition at both times, I find the landlord has failed to establish they have suffered any loss that results from a violation of the *Act*, regulation or tenancy agreement.

In addition, I find that since the landlord has not provided compensation to the tenants for issuing a 2 Month Notice to End Tenancy in an amount equivalent to one month's rent, I find the tenants were not required to pay rent for April 2012.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

In regard to the tenant's claim, I accept the tenants had provided the landlord with their forward address on April 13, 2012, from the testimony of both parties. I find that the latest the tenancy ended was May 8, 2012, from the landlord's submission in the Application for Dispute Resolution. As such, I find the landlord had until May 23, 2012

to either return the security and pet damage deposits or file an Application to claim against them.

Therefore, I find the landlord has failed to comply with Section 38(1) and the tenants are entitled to double the amount of both deposits. However, I will deduct from this amount the \$243.33 the tenants submit they agreed to provide the landlord for overholding the property for 5 days in May 2012.

Conclusion

For the reasons noted above regarding the landlord's Application, I dismiss the landlord's Application in its entirety without leave to reapply.

For the reasons noted above regarding the tenants' Application, I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,656.67** comprised of \$1450.00 double the security deposit; \$1450.00 double the pet damage deposit; less \$243.33 for overholding.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: August 10, 2012.

Residential Tenancy Branch