



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for compensation for damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on June 22, 2012. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there damages to the unit and if so how much?
2. Is the Landlord entitled to compensation for the damage and if so how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

The Tenant moved into the rental unit in October, 2010 and this tenancy started on November 1, 2011 as a fixed term tenancy with an expiry date of October 31, 2012. Rent was \$1,150.00 per month payable in advance of the 1st day of each month. The Tenants said they paid a security deposit of \$575.00 on October 28, 2010. The Tenant said they moved out of the unit on May 1, 2012.

The Landlord said that this was a very good tenancy and the Tenant and the Landlord had a good relationship, but as the Landlord is a Property Manager and as such he has been instructed by the owner of the property to make this application. The Landlord/Property Manager said he has applied to retain the Tenants' security deposit because the Tenants' broke a fixed term tenancy agreement and as a result the owner of the property has incurred costs to re-rent the property of \$575.00. The Landlord/Property Manager said his company charges ½ a month's rent or in this case \$575.00 to rent this property. As well the Landlord/Property Manager said the mail key that was returned to the Landlord was the wrong key and therefore it had to be replaced at a cost of \$98.34. The Landlord/Property Manager submitted a receipt for the

replacement mail key and he also requested to recover the filing fee of \$50.00 for this proceeding from the Tenants'. The Landlord/Property Manager said his total claim is \$723.34.

The Landlord/ Property Manager continued to say that because of the good relationship they had with the Tenants he is authorized to make a settlement offer of the Key Replacement cost of \$98.34 and the filing fee of \$50.00 for a total of \$148.34 to the Tenants. The Landlord/Property Manager said that if the Tenants accepted the offer he would send \$426.66 of their security deposit back to them.

The Tenant said they had paid the rent for April, 2012 and a new tenant moved into the rental unit on May 1, 2012; therefore the Landlord has no lost rent. The Tenant said this was a verbal agreement he had made with the Landlord and so he expected his full security deposit to be returned. The Tenants continued to say that they returned the mail box key and it is documented on the move out condition inspection report. Both Tenants said the key that they returned was the correct mail box key. The female Tenant said she had used the key on May 1, 2012 prior to returning it to the Landlord at the move out condition inspection at the rental unit. Both Tenants declined the Landlord's offer to settle and the Tenants made a counter offered that they would pay the Landlord's filing fee for their application of \$50.00, but would not pay the cost of the replacement mail box key. The Landlord declined the Tenants' offer.

Both sides retracted any settle offers and agreed to go to decision on the Landlord's application.

Analysis

I find the Landlords' claim to keep the Tenants' security deposit for breaking the tenancy agreement or for costs to re-rent the unit is the same thing as a request for liquidated damages when a tenancy ends.

Residential Tenancy Policy Guideline # 4 says that liquidated damages can be claimed when a tenancy ends if there is a clause in the tenancy agreement that both parties agree to, the clause states the amount to be claimed for liquidated damages, what the liquidated damages are for and that the amount is a pre-estimate of the loss not a penalty.

In this situation there is no clause in the tenancy agreement for liquidated damages and there is no other written agreement for compensation for breach of the tenancy agreement or for costs incurred by the Landlord to rent the unit to new tenants. Consequently, I find the Landlord has not established grounds to support his claim to retain the Tenants security deposit as compensation for ending the tenancy early. I dismiss the Landlord's claim to retain the Tenants' security deposit without leave to reapply.

With respect to the mail box key I accept the Tenants' testimony that they returned the correct mail box key as the Tenants supported their position with the move out condition inspection report which states the mail box key was returned and that they said they used the mail box key on May 1, 2012 prior to returning it to the Landlord. I did give consideration to the Landlord's claim that the wrong key was returned, which the Landlord supported with an invoice for the replacement key, but I find it difficult to believe that the new tenants who moved in May 1, 2012 were without a mail key until May 11, 2012 when the key was replaced. For these reasons I dismiss the Landlord's claim for the costs of replacing the mail box key in the amount of \$98.34 without leave to reapply.

As the Landlord has been unsuccessful in this matter, I order the Landlord to bear the costs of the filing fee of \$50.00 that he has already paid.

Conclusion

I dismiss the Landlord's application 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*.

Residential Tenancy Branch