



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with cross Applications for Dispute Resolution with parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; her witness; the tenants and their advocate.

The tenants and their advocate testified they had received the landlord's evidence on September 14, 2012 and I noted that the landlord's evidence was received by the Residential Tenancy Branch on September 13, 2012 but that it did not contain the photographs the tenants and the advocate were referring to.

Residential Tenancy Branch Rule of Procedure 3.1 states that together with a copy of the Application for Dispute Resolution the applicant, in this case the landlord, must serve the respondent, in this case the tenants, with copies of, among other things, the details of the monetary claim and any other evidence the applicant intends to rely upon.

Rule 3.5 states that for evidence not available at the time the Application was submitted to the Residential Tenancy Branch the applicant must serve the respondent as soon as possible and at least 5 days prior to the prior to the hearing. "At least" excludes the day the evidence is received; the day of the hearing; and any weekend days or statutory holidays in between. In the case before me the deadline to meet this requirement would have been September 7, 2012.

Based on the above, I find the landlord has failed to serve the tenants with her evidence in accordance with the Rules of Procedure and I have not considered any of it in this decision.

At the outset of the hearing the landlord the landlord submitted that she wanted to amend her Application to reduce the amount of her claim from 632.79 to \$325.00. The landlord submitted that she only wanted to ensure that she did not have pay the equivalent of the security deposit back.

However, later in the hearing the landlord rescinded this and wanted to seek the full amount of her claim. I did not amend the landlord's Application and have adjudicated it based on her original Application.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for damage or loss; 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 return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenants submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on May 1, 2011 for a month to month tenancy beginning on April 1, 2011 for a monthly rent of \$650.00 due on the last day of each month with a security deposit of \$325.00 paid;
- A copy of the tenant's notice to end the tenancy dated March 30, 2012 with an effective date of April 30, 2012; and
- A copy of a letter dated May 23, 2012 from the tenants to the landlord providing the tenant's forwarding address.

The parties agree there were no Condition Inspection Reports written for either the move in or the move out inspections. The landlord submits there were 104 nail holes in the walls that needed to be repaired and the full house had to be repainted. The landlord submits the unit was newly repaired at the start of the tenancy.

The landlord submitted that they did do a walk through at the start of the tenancy but did not write a report. She went on to say that when the tenants had moved out their belongings she called her over to do an inspection but she was not prepared to complete one at that time and she offered them to come back on a day following but that that date was unacceptable to the tenants so she told them to call her to set up an appointment – she states they never did call her for an appointment.

Analysis

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.

As such, from the evidence and testimony provided by the tenants and without any contrary testimony, and allowing for the delivery of registered mail, I find the tenants provided the landlord with their forwarding address on or before May 28, 2012. As a result, the landlord had until June 13, 2012 to either return the deposit in full or file an Application for Dispute Resolution seeking to claim against the deposit.

As the landlord submitted her Application for Dispute Resolution, through her agent, on July 5, 2012, I find the landlord failed to fulfil her obligations under Section 38(1) and as such the tenants are entitled to return of double the deposit. I note the allowable interest for tenancies that began in 2011 and ended in 2012 is 0%.

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.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In the landlord's Application, she seeks compensation for damage resulting from excessive nail holes in the rental unit. I find no terms in the tenancy agreement that instruct or restrict a tenant to any number of nail holes for the hanging of pictures.

Further, as the landlord has provided no evidence recording either the condition at the start or the end of the tenancy, I find the landlord has failed to establish the tenants did not comply with any requirements under the tenancy agreement or the Section 37 of the *Act*.

Therefore, I find the landlord has failed to establish that she has suffered a loss or damage; she also has failed to establish that even if she suffered a loss or damage she has not established that it resulted from a violation of the *Act* or tenancy agreement.

Conclusion

For the reasons noted above, I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$700.00** comprised of \$650.00 double the security deposit and the \$50.00 fee paid by the tenants for this application.

Also based on the above, I dismiss the landlord's Application in its entirety, without leave to reapply.

I grant a monetary order to the tenants in the amount of **\$700.00**. 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: September 17, 2012.

Residential Tenancy Branch