



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, for compensation for damage to the unit, site or property, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Landlord said they served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail July 14, 2012. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties present.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for unpaid rent and if so how much?
3. Are there loss or damages and if so how much?
4. Are the Landlords entitled to compensation for loss or damage and if so how much?
5. Are the Landlords entitled to keep the Tenants' security and pet deposits?

Background and Evidence

This tenancy started on July 1, 2011 as a fixed term tenancy with an expiry date of June 30, 2012. The Tenancy agreement states that at the end of this tenancy the tenancy may continue for another fixed length on time. Rent was \$1,000.00 per month payable at the end of each month. The Tenants paid a security deposit of \$555.00 and a pet deposit of \$335.00 in advance of the tenancy. The Landlord said the Tenants moved out of the rental unit on June 30, 2012. A move in and a move out condition inspection were completed at the start and the end of the tenancy.

The Landlords said they are claiming the following loss or damage to the rental unit:

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| 1. Landlord cleaning time | \$ 60.00 |
| 2. Landlord painting | \$ 24.00 |
| 3. Replacement blinds | \$ 75.73 |
| 4. Replacement light bulbs | \$ 4.00 |
| 5. Carpet cleaning | \$ 95.20 |
| 6. Carpet replacement | \$465.00 |

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| Total | \$723.93 |
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The Tenants said they left the rental unit in poor condition and they are not disputing the Landlords' damage claim and they are willing to pay the damages in the amount of \$723.93. As well the Tenants said they agreed to this when the move out condition inspection report dated June 30, 2012 was completed.

The Landlords continued to say that on June 3, 2012 the Tenants gave him written notice that they were moving out on June 30, 2012. The Landlord said that written notice on June 3, 2012 for June 30, 2012 is late notice to move out of the unit for June 30, 2012. The Landlords said as a result of the Tenants not giving the Landlord proper notice to end the tenancy the Tenants are responsible for the rent for July, 2012 of \$1,000.00.

The Tenants said they are disputing the rent for July, 2012, because on May 31, 2012 they told the Landlord verbally that they were moving out on June 30, 2012. The Tenant continued to say the Landlord told them to give him written notice at a later time as he was collecting rent at that time. The Tenant said they did give the Landlords written notice on June 3, 2012 that they were moving out on June 30, 2012. The Landlord said that on May 31, 2012 the Tenants did give him verbal notice that they were moving out on June 30, 2012, but he did not tell them to give him written notice at a later time because he was collecting rent. The Landlord said the Tenants had time to give him the proper written notice on the correct date which was May 31, 2012.

In addition the Tenant said the Tenancy Agreement states the tenancy ends on June 30, 2012 unless there is another fixed term tenancy agreement. The Tenant said there was no doubt in either the Tenants' mind or the Landlords' mind that the Tenants were moving out on June 30, 2012. The Tenant said there was no new fixed term tenancy agreement and there was no agreement to continue the tenancy. The Landlord agreed there was no new fixed term tenancy agreement to extend the existing tenancy.

In addition the Landlord requested to retain the Tenants security deposit of \$555.00 and the pet deposit of \$335.00 as partial payment of the unpaid rent, for compensation for damages and to recover the filing fee of \$50.00 from the Tenants.

The Tenant said they agreed part of their security deposit and pet deposit could be used to pay for the Landlord's damage claim, but not for the July, 2012 rent.

Analysis

As both parties agree the unit was left in poor condition, the Landlords had to clean and repair the rental unit and that the Tenants are not disputing the Landlords' damage claim of \$723.93, I award the Landlords the damage claim of \$723.93 as applied for.

With respect to the Landlords' claim for unpaid rent for July, 2012, section 44(b) of the Act says a fixed term tenancy ends on the end date in the tenancy agreement if it provides that the tenants will vacate on that date. As well section 44 (3) says that a fixed term tenancy may continue on a month to month basis at the end of a fixed term tenancy if the tenancy agreement states this and then the tenancy would be governed by month to month tenancy provisions. In this tenancy agreement it states that the tenancy may continue at the end of the fixed term for another fixed length of time. The month to month provision is removed from the tenancy agreement; therefore the only way the tenancy could continue past the end date in the tenancy agreement of June 30, 2012 is if the parties agreed to another fixed term tenancy agreement or if the Tenants continued to live in the unit past June 30, 2012. Both Parties agreed that there was no new fixed term agreement and that the Tenants moved out on June 30, 2012. Consequently I find that this tenancy ended on June 30, 2012 because there is no new fixed term tenancy agreement extending the tenancy, which is called for in the tenancy agreement dated June 17, 2012. Therefore I dismiss the Landlords' claim for unpaid rent for July, 2012 as the tenancy ended June 30, 2012.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep part of the Tenants' security deposit and pet deposit in full payment of the Landlords' damage claims as follows:

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| | Damage claims: | \$ 723.93 |
| | Recover filing fee | \$ 50.00 |
| | Subtotal: | \$ 773.93 |
| Less: | Security Deposit | \$ 555.00 |
| | Pet Deposit | \$ 335.00 |
| | Subtotal: | \$ 890.00 |
| | Balance to be returned to Tenants | \$ 116.07 |

I order the Landlord to retain \$773.93 of the Tenants deposits. As well I order the Landlords to return \$116.07 of the Tenants deposits forthwith.

Conclusion

The Landlord is ordered to retain \$773.93 of the Tenants security and pet deposits.

The Landlord is ordered to return \$116.07 of the Tenants security and pet deposits forthwith to the Tenants.

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