



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNDC, FF
Tenants: MNSD, MNDC, FF

Introduction

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

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

The tenants testified that they had submitted evidence to the Residential Tenancy Branch (RTB) on October 4, 2012 that I did not have available either in the hard copy file or in the electronic file. The landlords confirmed that they had received this evidence and as such I allowed the tenants to re-fax their evidence to me no later than the end of business October 15, 2012. The tenants submitted their evidence by fax.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for compensation for damage or loss and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy originally began on July 31, 2000 and ended when the tenants vacated the rental unit on July 2, 2012 at which time the rent was \$1,205.00 due on the 1st of each month with a security deposit of \$550.00 paid.

The male landlord confirmed that he had miscalculated the amount of interest owed because he had used the wrong date for the start of the tenancy. Upon recalculation the landlord determined the total amount of deposit and interest was \$591.51. The male tenant noted, in the hearing, he agreed this was the correct interest calculation.

The parties agree the landlords returned to the tenants \$263.00 by cheque dated July 9, 2012. The landlords included in their evidence a breakdown of the amounts withheld as follows: \$282.00 for a dehumidifier; \$10.00 to remount the front deck railing; \$15.00 for dumping fee and vehicle usage to remove garbage.

The landlord submits the tenants had complained about high humidity in the rental unit and the landlord purchased a portable dehumidifier in January 2011 on the condition that the tenants used it properly and left it at the end of the tenancy. The tenants testified that the landlord must have mistaken this issue with some of their other tenants. The landlord provided a copy of a receipt confirming purchase in January 2011.

The landlord submits the tenants removed a railing when they moved out and did not repair it after they had done so. The tenants submit that they did indeed remove the railing, when they moved out, as the landlord had done for her when she had moved in and that she had to repair when she moved in.

The landlord submits the tenant had left behind substantial garbage that required removal. The tenants testified that they had left two bags of garbage and the pickup service was due the next day. The landlord submitted two photographs showing a couple of bags of garbage and some furniture; a kiddie pool; and other containers. The tenants did not comment on the landlord's photographs.

The tenants submit they provided their forwarding address to the landlord via email on June 29, 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.

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.

As such, the tenant is required to remove all belongings including garbage; there is no exemption from this requirement if pickup service is available in a day or two; the garbage must be removed. Further, Section 37 speaks only to the condition the tenant leaves the rental unit in at the end of the tenancy and as such, I find, the tenant was required to reinstall the railing. For these reasons, I find the landlord is entitled to compensation for both of these items.

As to the dehumidifier, I find the landlord has established that they purchased a portable dehumidifier in January 2011. I find the landlord's testimony to be credible and based on the balance of probabilities I find the landlord has established that the dehumidifier was purchased for this rental unit. I therefore find the landlord is entitled to this compensation.

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, with the appropriate interest 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 the landlords had not filed an Application for Dispute Resolution until August 27, 2012 to claim against the deposit, and despite the landlord's return of a portion of the security deposit by July 9, 2012, I find the landlord failed to comply with the requirements under Section 38(1), and the tenants are entitled to double the amount of the security deposit.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$307.00** comprised of \$282.00 for the dehumidifier; \$10.00 for repairs; \$15.00 for garbage removal.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$834.51** comprised of \$1,100.00 for double the security deposit; \$41.51 interest less \$307.00 due the landlord as noted above.

I order the landlord may deduct the amount of security deposit and interest already returned to the tenants in the amount of \$263.00 in partial satisfaction of this claim. I grant a monetary order to the tenants in the amount of **\$571.51**.

As both parties were essentially successful in their claims, I dismiss both parties Applications to recover the filing fee from the other party.

This order must be served on the landlords. If the landlords fail 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: October 15, 2012.

Residential Tenancy Branch