



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was originally scheduled for October 3, 2012 to deal with cross applications. The tenants had applied for return of double the security deposit and pet deposit, less the portion already refunded to them. The landlord applied for a Monetary Order for unpaid rent; damage to the unit; damage or loss under the Act, regulations or tenancy agreement; and authority to retain all or part of the security deposit or pet deposit.

Both parties appeared at the originally scheduled hearing and I determined that the tenants had not had sufficient opportunity to receive and review the landlord's Application and evidence prior to the scheduled hearing date. I proceeded to hear the tenants' application and then adjourned the hearing to deal with the landlord's application at a later date. I issued an Interim Decision to record orders I issued with respect to the adjournment and service of hearing documents.

Both parties appeared at the reconvened hearing of November 6, 2012 and confirmed receipt of the same documents served upon the Branch.

Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Are the tenants entitled to return of double the security deposit and pet deposit in the amount claimed?
2. Has the landlord established an entitlement to recover the amounts claimed for unpaid rent; damage to the unit; and, damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The parties entered into a one-year fixed term tenancy agreement set to commence January 2009. The tenants paid a \$900.00 security deposit. The tenants also paid a

pet deposit; however, the amount paid was in dispute. The parties entered into subsequent fixed term tenancy agreements with the most recent agreement commencing June 1, 2011 for a one-year fixed term requiring the tenants to vacate the rental unit at the end of the tenancy on May 31, 2012 (recorded as May 31, 2011 in error on the tenancy agreement). The last tenancy agreement reflects a monthly rent of \$1,900.00; however, the tenants were given a monthly rent reduction of \$50.00 to reflect various deficiencies. The tenants vacated the rental unit May 31, 2012.

Move-in and move-out inspection reports were prepared by the landlord's property manager. The tenants provided their forwarding address to the property manager when completing the move-out inspection on June 1, 2012. The tenants did not authorize any deductions from the security deposit or pet deposit in writing.

In mid-July 2012 the tenants received a refund cheque dated July 1, 2012 in the amount of \$900.00 from the landlord.

Tenants' Application

The tenants applied for double the security deposit and double the pet deposit, less the \$900.00 payment already received. The tenants submitted in their application that the pet deposit was \$700.00. After receiving the landlord's evidence the tenants acknowledged the pet deposit paid was not \$700.00 as initially claimed but that they paid a total of \$550.00 for a pet deposit comprised of an initial payment of \$200.00 as recorded in the original tenancy agreement and then a subsequent payment of \$350.00.

The landlord stated that there was a delay in refunding the security deposit because she wanted to sort out discrepancies between the move-out inspection report prepared by her property manager on June 1, 2012 and the move-in inspection report prepared for the incoming tenants on June 15, 2012. The landlord was also of the position that the tenancy ended July 1, 2012.

The landlord submitted that the landlord had requested a larger pet deposit when she determined the tenants had a second pet; however, there is no evidence the tenants ever paid a second pet deposit. When the landlord terminated the services of her property manager she was forwarded the pet deposit of \$200.00 and provided the statement prepared by the property management company as evidence.

The tenants' evidence of the pet deposit included the tenancy agreement for the initial deposit and an "Invoice" requesting payment of an additional \$350.00. The tenant

believes he made the payment by money order but does not have evidence of such or other evidence to demonstrate the withdrawal of funds.

Landlords' Application

Below I have summarized the landlord's claims against the tenants and the tenants' responses.

Loss of rent –

The landlord submitted that the tenants failed to give written notice to end the tenancy. The landlord re-rented the unit starting June 15, 2012 and seeks to recover loss of rent of \$900.00 from the tenants.

The tenants responded by stating that in April 2012 they informed the landlord that they would not be renewing the tenancy agreement as a courtesy.

The landlord submitted that the tenants had asked to stay in the unit until June 15, 2012 but the landlord did not agree to end the tenancy part way through the month so the landlord assumed the tenants would move out July 1, 2012. The landlord subsequently learned from the property manager in May 2012 that the tenants intended to move out at the end of May 2012.

Repairs –

The landlord claimed \$580.22 for repairs and cleaning without a detailed breakdown of this amount. I noted that various receipts and invoices were included in the landlord's evidence package that appear to total more than \$580.22. The landlord submitted that she would be satisfied to recover \$100.00 for steam cleaning and \$100.00 for the cleaning of mouldy tubs and dirty fans.

The tenants submitted that the property was in need of various repairs and maintenance and that the property was given to them in such a condition. The tenants submitted that they periodically cleaned the carpets and pointed to the move-out condition inspection report as evidence that the tenants did not damage the rental unit and did not leave it less than reasonably clean.

The landlord acknowledged the move-out inspection does not reflect damage or that cleaning was required but pointed to the move-in inspection of June 15, 2012 as better evidence of the condition of the rental unit. The landlord submitted that the property manager had explained the discrepancies between the two inspection reports as being attributable to the incoming tenants having a sharper eye.

Placement fee --

The landlord is seeking to recover the cost associated to finding new tenants for the rental unit from the tenants.

Move-out inspection –

The landlord is seeking to recover the amount she was charged by the property manager to complete a move-out inspection from the tenants.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the Applications.

Tenants' Application

I am satisfied the tenants paid a \$900.00 security deposit and \$200.00 pet deposit at the beginning of the first tenancy. Landlords are not permitted to charge more than one pet deposit even if the tenant has more than one pet. Although the property manager issued an Invoice to the tenants seeking to collect a second pet deposit I find there is insufficient evidence the tenants actually paid the landlord or property manager a further \$350.00 for a pet deposit.

Section 38 of the Act provides for the return of security deposits and pet deposits. As the landlord did not have the tenants' written consent to make any deductions from the deposits, the landlord was required to comply with section 38(1) by either returning the deposits to the tenants or filing an Application for Dispute Resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit and pet deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

The landlord was of the position the tenancy ended July 1, 2012; however, I reject that position and find that the tenancy ended May 31, 2012. May 31, 2012 is the date the tenants vacated the rental unit and is the date specified in the fixed term tenancy agreement as the date the tenancy will end and the tenants will have to vacate. The tenants complied with the terms of the tenancy agreement and there is insufficient evidence that a new tenancy agreement formed or that the existing agreement was amended in accordance with the Act.

As the tenants provided their forwarding address in writing on June 1, 2012 the landlord had until June 16, 2012 to either refund the deposits or file an Application in order to comply with the Act. In this case the landlord failed to meet her obligations under section 38(1) by issuing a partial refund cheque dated July 1, 2012.

Issues related to the condition inspection reports prepared by her property manager did not form a basis to withhold any part of the deposits or give the landlord a right to extend the time limits required by the Act. Accordingly, I find the landlord must pay the tenants double the security deposit and pet deposit pursuant to section 38(6) of the Act.

The tenants are awarded \$2,200.00 $[(\$900.00 + \$200.00) \times 2]$ less \$900.00 they have already received. I also award the filing fee the tenants paid for their Application.

In light of the above, the net award provided to the tenants is \$1,350.00 calculated as $[\$2,200.00 - 900.00 + 50.00]$.

Landlord's Application

Loss of rent –

As I found previously, the tenancy ended May 31, 2012 pursuant to the term of the written tenancy agreement. Where a tenancy agreement requires a tenant to vacate the rental unit at the end of the fixed term there is no obligation for the tenant to give the landlord notice to end the tenancy. Therefore, I find the landlord is not entitled to loss of rent for the first half of June 2012 and I dismiss this portion of the landlord's claim.

Repairs and cleaning –

The Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the Regulations is the best evidence of the condition of the rental unit on the date of the inspection unless there is a preponderance of evidence to the contrary.

I find that the condition inspection report prepared June 1, 2012 is the best evidence as to the condition of the rental unit on June 1, 2012 as it was prepared with both the tenant and the landlord's agent present and the day following the end of tenancy. I find the move-in inspection of the incoming tenants on June 15, 2012 to be of less value and find it reasonable that discrepancies between the reports may be attributable to recording items subject to aging and wear and tear on the report for the incoming tenants.

In light of the above, I have relied upon the move-out inspection report dated June 1, 2012 as evidence of the condition of the rental unit on June 1, 2012. I further note that the landlord did not provide any photographs or receipts to demonstrate that she incurred losses of \$200.00 for cleaning. Therefore, I find the landlord has not met her burden to prove the tenants left the unit in need of further cleaning and that the landlord suffered \$200.00 in losses as a result.

I dismiss the landlord's claim for cleaning or repairs.

Placement fee –

The landlord is not entitled to recover the cost to find replacement tenants as I have found the tenants moved out in accordance with the term of their tenancy agreement. Therefore, I dismiss this portion of the landlord's claim.

Move-out inspection report fee –

Every landlord is required to participate and prepare a move-out inspection report under the Act. Costs associated to complying with the requirements of the Act are not recoverable. Therefore, this portion of the landlord's application is dismissed.

Filing fee –

As the landlord was not successful in her application I make no award for recovery of the filing fee.

Conclusion

The tenants are provided with a Monetary Order in the amount of \$1,350.00 to serve upon the landlord and enforce as necessary. The Monetary Order may be filed in Provincial Court (Small Claims) and enforced as an Order of the court.

The landlord's application has been dismissed in its entirety.

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: November 29, 2012.

Residential Tenancy Branch