



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNR MNSD FF

Introduction

This hearing dealt with applications by the tenants and the landlord. The tenants applied for double recovery of the security deposit and further monetary compensation. The landlord applied for monetary compensation. Two tenants and an agent for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Are the tenants entitled to double recovery of the security deposit?
Are the tenants entitled to further monetary compensation as claimed?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began in December 2011, with a monthly rent of \$1100. At the outset of the tenancy, the tenants paid the landlord a security deposit of \$550. The tenancy ended on August 1, 2011.

Tenants' Claim

The tenants stated that they mailed the landlord their written forwarding address in August 2011. There did not know the exact date or provide a copy of the forwarding address in their evidence. The landlord did not return the security deposit.

The tenants applied for further monetary compensation of \$455 for the cost of emergency repairs. They stated that there was extreme water damage in the rental unit

kitchen, which resulted from water damage from the suite above theirs. The leaking water was near an electrical outlet. The tenants called the landlord, but he did not do any repairs. The tenants therefore carried out the necessary repairs and other repairs in the rental unit at their own expense. The tenants did not provide receipts to support this portion of their claim.

The landlord's response to the tenants' claim was as follows. The landlord did not receive the tenants' forwarding address until he received their application for dispute resolution dated August 27, 2012. The leak in the rental unit occurred before the tenancy began, and the repairs were done. The tenant did repairs to the rental unit without the landlord's permission, and the landlord questioned the validity of the tenants' invoices. The landlord only acknowledged the tenants' receipts of \$7.03 for the cost of materials.

Landlord's Claim

The landlord stated that he received late notice in mid-July 2011 that the tenants were vacating the rental unit. The landlord stated that the tenancy began on December 1, 2009, and that rent was due on the first of each month. The landlord attempted to re-rent the unit as quickly as possible, but he was unable to find a new tenant until August 15, 2011. The landlord has claimed lost revenue of \$550 for August 1 to 14, 2011, and a further \$550 for the cost of re-renting the unit. The landlord did not submit a copy of the tenancy agreement in his evidence.

The landlord also claimed \$200 for the cost of repairs to walls of the rental unit and \$300 for the cost of numerous attendances to the strata due to problems caused by the tenants.

The tenants' response was as follows. The tenancy did not begin until December 7, 2009, and the tenants gave their notice to vacate on July 7, 2011. The rent was not due until the 7th of each month, but the tenants paid their rent early, on the first of each month. The tenants were not the trouble-makers in the building; the building was not a safe, secure place to live. The male tenant was assaulted by another resident in the building.

Analysis

Tenants' Claim

I find that the tenants are not entitled to double recovery of the security deposit. The tenants failed to provide sufficient evidence that they gave the landlord their forwarding address prior to serving the landlord with their application on August 27, 2012. Tenants must provide their written forwarding address within one year of the end of the tenancy, or their claim for the security deposit is extinguished. In this case, the tenancy ended on August 1, 2011, and more than one year had passed before the landlord received the forwarding address in writing. Therefore, the tenants' application for the security deposit is extinguished.

Aside from the \$7.03 acknowledged by the landlord, I find that the tenants are not entitled to the remainder of their monetary claim. The tenants acknowledged that they carried out the repairs without the authorization of the landlord, and they failed to provide receipts or copies of written requests for repairs.

Landlord's Claim

I find that the landlord is entitled to \$550 in lost revenue for August 1 to 14, 2011. I find the testimony of the landlord more credible and likely than that of the tenants regarding the start date of the tenancy and the date rent was due. I do not find it likely that the tenants paid rent on the first of the month if it was due on the 7th. Further, if rent was due on the 7th of each month, the tenants would have had to give their notice to vacate on the 6th of the month, and they stated that they gave notice on the 7th. The tenants also failed to provide a copy of their written notice to vacate. I accept the evidence of the landlord that he attempted to re-rent the apartment as soon as possible but was unable to do so until August 15, 2011.

I find that the landlord is not entitled to the remainder of their monetary claim. The landlord is not entitled to \$550 for the cost of re-renting the unit, as the landlord did not provide evidence of this expense or any evidence of a liquidated damages clause in the tenancy agreement. The landlord did not provide sufficient evidence that the tenants damaged the rental unit walls. I find the landlord is not entitled to monetary compensation for attending at the strata, as the potential remedy for a landlord when tenants are breaching their tenancy agreement and causing problems in the building is to issue a notice to end tenancy for cause. A landlord is generally not entitled to additional monetary compensation for carrying out their work as a landlord.

As the landlord's claim was only partially successful, I find that they are not entitled to recovery of the filing fee for the cost of their application.

Conclusion

The tenants are entitled to \$7.03. The landlord is entitled to \$550. Although the tenants have extinguished their claim to the security deposit, it may still be used for other legal purposes under the Act, such as offsetting an award to the landlord. I find it appropriate in this case to order that the landlord retain the security deposit in full compensation of their monetary award.

I decline to grant the tenants a monetary award for the minimal balance of \$7.03.

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 19, 2012.

Residential Tenancy Branch