



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenants filed for a monetary order for return of double the security deposit under section 38 of the Act, to recover an additional utilities deposit paid to the Landlord, and to recover the filing fee for the Application.

The Landlord filed for an order to keep the security deposit in partial satisfaction of the claim, for a monetary order for alleged damages and cleaning, for money owed or compensation under the Act or tenancy agreement and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

The Landlord filed this Application on September 24, 2012, and began sending out his evidence November 30, 2012, for a hearing to be conducted on December 10, 2012.

The Landlord did not serve the Applicant's Advocate with any evidence for this matter. The Advocate for the Tenants filed the Application and included his name and address, and the names and addresses of all the Tenants. The Advocate was known to the Landlord as the Advocate paid the security deposit at the outset, attended the move out condition inspection report (which the Landlord objected to), and the Landlord made

reference to the Applicant as not being on the tenancy agreement in the Landlord's Application.

The Landlord sent one of the Tenants evidence by registered mail, on November 30, 2012. Evidence served in this way is deemed served five days later and the one Tenant is deemed served on December 5, 2012, however, this does not meet the requirement under the rules of procedure to serve the Tenant five days before the hearing. Furthermore, the Landlord did not provide evidence he served the other Tenants.

The Notice of Hearing and Hearing information package given to each Applicant is clear that parties should serve their evidence as soon as it is available. These documents are also clear in explaining there are deadlines that apply to the service of documents. In this instance, the Landlord waited too long to serve the one Tenant and failed to provide sufficient evidence to prove he served the other Tenants or their Advocate.

For the above reasons, I found during the hearing that the Landlord has not served his evidence in accordance with the rules of procedure and the evidence is inadmissible. Following this finding, the Landlord requested an adjournment to serve the Advocate and the other Tenants. I denied the Landlord's request for an adjournment, as I explained during the hearing, because an adjournment would not rehabilitate the breach of the rules for this evidence. In other words, even after an adjournment this evidence would still have been served late for the hearing and would not be admissible. Nevertheless, the Landlord was allowed to testify about his claims.

Issue(s) to be Decided

Are the Tenants entitled to return of double the security deposit?

Is the Landlord entitled to the monetary relief sought?

Background and Evidence

The Tenants' Claims

The Advocate for the Tenants, who is the parent of one of the Tenants, testified that move in and move out condition inspection reports were performed by the Landlord.

The Advocate testified that the Tenants had paid a security deposit of \$1,100.00 to the Landlord on April 6, 2011. The Advocate also testified that that each of the four Tenants also paid the Landlord a utilities deposit of \$150.00 each, totalling \$600.00.

The Advocate testified that the Tenants had vacated the rental unit on August 27, 2012. The Advocate testified he gave the Landlord the forwarding address to return the deposits to on August 27, 2012. The Advocate further testified he gave the forwarding address in writing to the Landlord in an email on September 11, 2012, and the Landlord testified that he had received the forwarding address by email on that date.

The Advocate testified that the Tenants did not agree to sign over any portion of the deposits to the Landlord.

In reply to the Tenants' claims the Landlord testified he only received one utility deposit of \$150.00.

The Landlord's Claims

The Landlord claims the Tenants did not clean the rental unit or make repairs to it, when they vacated.

The Landlord read into evidence sums recorded on invoices. The Landlord claimed that holes in the drywall had to be repaired and that cleaning had to be performed. The Landlord was disappointed that none of the Tenants appeared at the hearing.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

Accordingly, an Applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on each of the Applicants to prove the existence of the damage or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the of the respective Respondent(s). Once that has been established, the Applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Applicant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Using the above test, I turn to my findings.

Tenants' Awards

I find that the Tenants are entitled to the return of the security deposit in the amount of \$1,100.00. I do not find the Tenants are entitled to doubling of the security deposit under section 38 of the *Act*, because the Landlord had 15 days from the later of the end of the tenancy or receipt of the Tenants' forwarding addresses in writing, to either return the deposit or file a claim against it. I find the Landlord filed his claim within the required 15 days, and therefore, the Tenants are not entitled to double the security deposit.

I also find that the Tenants are entitled to return of \$150.00 for the utility deposit. I find the Tenants failed to provide sufficient evidence to prove each Tenant paid the Landlord a utilities deposit of \$150.00.

I also caution the Landlord that he is not allowed to take a deposit for utilities under the *Act*, and any clause in his tenancy agreement requiring this would be void.

I order the Landlord to pay the Tenants the sum of **\$1,300.00**, comprised of the security deposit of \$1,100.00, the \$150.00 utility deposit and the \$50.00 filing fee for the Application, *subject to any set off arising from the Landlord's claims.*

Landlord's Awards

I find the Landlord failed to provide sufficient evidence to prove the Tenants breached the *Act* or tenancy agreement, or that the Landlord had sufficient evidence to verify the monetary amounts claimed against the Tenants.

As described above, I found the Landlord failed to provide his evidence to the Tenants in accordance with the rules of procedure. The Landlord waited too long to serve one of the Tenants and failed to provide sufficient evidence he served any of the other Tenants or their Advocate.

For the above reasons, I dismiss the claims of the Landlord without leave to reapply.

Therefore, I order the Landlord to pay the Tenants the sum of **\$1,300.00**, and the Tenants are granted a formal monetary order which must be served on the Landlord and may be enforced in the Provincial Court.

Conclusion

I order the Landlord to pay the Tenants the sum of **\$1,300.00**. The Tenants are not entitled to return of double the security deposit.

The Landlord's claims are dismissed due to insufficient evidence.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 10, 2012.

Arbitrator
Residential Tenancy Branch