



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the tenants and the landlord.

The tenants clarified at the outset of the hearing that they are seeking return of double the security deposit and compensation for storage; garbage removal; and moving fees.

At the outset of the hearing the parties confirmed that they had not served any of their evidence to the other party until the day before the hearing. Each party stated that they could not deliver the evidence provided by the other party but that they finally connected and delivered to each other the evidence, through the tenant's sister.

As a result and since the Residential Tenancy Rules of Procedure require the service of all evidence to be completed at least 5 days prior to the hearing I have not considered either parties documentary evidence in this decision. I have only considered the relevant testimony provided during the hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for damage or loss and for double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began in September 2011 for a monthly rent of \$1,500.00 due on the 1st of each month with a security deposit of \$750.00 paid. The parties agreed the landlord returned \$250.00 of the deposit to one of the original tenants on the tenancy agreement in October 2011. The parties also agree the landlord returned \$200.00 of the remaining \$500.00 deposit to the tenants at the end of the tenancy.

The tenants testified that they provided the landlord with their forwarding address in writing on November 1, 2012 via registered mail. The landlord cannot recall specifically when he received the tenants forwarding address but did agree it was sometime in

November 2012. The tenants submit they are seeking double the full security deposit of \$750.00 for a total compensation related to the deposit of \$1,500.00.

The tenants also submit that they never gave the landlord notice of ending their tenancy but rather one of their roommates advised the landlord that she was moving out. The tenants testified that they advised the landlord that they could not afford the full \$1,500.00 when the roommate moved out and so they would either like to reduce the rent to \$1,140.00 or get another roommate. The tenants submit that the landlord would not reduce the rent or allow them to get another roommate.

The tenants submit they seek compensation in the amount of \$370.00 for storage fees; garbage fees for the removal of garbage from the rental unit; and moving fees for paying someone to move them. The tenants have provided no receipts for any of these costs.

The landlord testified that after he received the roommate's notice that she was moving out the tenants indicated to him that they would be moving out as well at the end of September 2012 but that they did not completely vacate or return possession of the rental unit until October 5, 2013. The tenants confirmed they moved out by October 5, 2013.

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.

In the absence of any evidence I must rely on the testimony provided by both parties in relation to the ending of the tenancy. The tenants say the landlord forced them out of the rental unit and that no notice to end the tenancy was issued by the landlord. However the landlord submits the tenants identified that they could not afford the rental unit and chose to move out.

As the burden to provide sufficient evidence to support their claim for compensation for damage or loss rests with the tenants and when faced only with testimony that is disputed by the other party I find the tenants have failed to provide sufficient evidence that the landlord ended the tenancy contrary or in violation of the *Act*. Further, even if the tenants had established the landlord had violated the *Act* in ending the tenancy they have provided no evidence to establish the value of that loss (i.e. receipts). For these reasons, I dismiss this portion of the tenant's claim.

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 in full 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.

From the testimony of both parties, I accept that the landlord returned \$250.00 of the security deposit to a former tenant when she vacated the rental unit in 2011 and that he returned \$200.00 at the end of the tenancy, leaving a balance of \$300.00 in the security deposit for the purposes of this decision.

Despite the landlord's submission that there was substantial damage to the rental unit the landlord testified that he had not submitted an Application for Dispute Resolution seeking compensation for damages or loss or to claim against the security deposit. As such, and since the landlord did not return the deposit in full I find the landlord has failed to comply with Section 38(1) and the tenants are entitled to double the amount of the deposit held at the end of the tenancy in accordance with Section 38(6).

As the landlord had returned \$250.00 of the deposit to a former tenant in 2011 I find the balance of the deposit held at the end of the tenancy was \$500.00 and as such the tenants are entitled to double this amount less the amount returned for a total of \$800.00.

The landlord remains at liberty to file his own Application for Dispute Resolution to claim for damages to the rental unit or for compensation for damages or loss resulting from the tenancy, he cannot simply retain the deposit unilaterally.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$800.00**. This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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: February 26, 2013

Residential Tenancy Branch