



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNSD, MNDC, FF
Tenant: MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking a monetary order for compensation for loss or damage under the Act, regulations or the tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenant were done by registered mail on March 15, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by registered mail on March 11, 2013, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there loss or damages to the Landlord and if so, how much?
2. Are the Landlords entitled to compensation for loss or damages and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Is the Tenant entitled to recover the security deposit?

Background and Evidence

This tenancy started on July 15, 2011 as a month to month tenancy. Rent was \$850.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$425.00 on July 4, 2011.

The Tenant said the tenancy ended on March 31, 2012 due to an eviction Notice, but they were unable to move out of the rental unit on April 7, 2012. The Tenant said the Landlord had her forwarding mail address from the start of the tenancy as this address has been her mailing address for 15 years and still is her mailing address. The Tenant continued to say that the Landlord did not return her security deposit and as a result she made this application. The Tenant did acknowledge that she should pay for the time she over stayed in the rental unit in the amount of \$212.50.

The Landlord said he received a phone message from the Tenant on March 30, 2012 which said he could keep the security deposit for the April, 2012 rent. The Landlord continued to say he was surprised when he received the Tenant's application and then he decided to file his application as well. The Landlord said his application is for the rent for the 8 days in April, 2012 that the Tenant overheld in the rental unit for an amount of \$212.50, for loss of rental income for April, 2012 in the amount of \$637.50 and for carpet cleaning in the amount of \$448.00. The Landlord said the Tenant admitted to the overholding in the rental unit and she agreed to pay the rent for that time in the amount of \$212.50. As well the Landlord said he advertised the rental unit online and he found new tenants that moved in May 15, 2012. The Landlord continued to say that there was a "No Contact Order" between the Landlord and the male occupant so the Landlord said he did not show the unit until the Tenant had vacated the rental unit. The Landlord said he re-rented the unit as soon as he was able to.

The Landlord continued to say the Tenant has two dogs and the tenancy was for over a year, so when the Tenant moved out the Landlord had the carpets cleaned at a cost of \$448.00. The Landlord submitted the carpet cleaning bills into evidence. The Tenant said she cleaned the carpets with her rug cleaner so she disagrees with this part of the Landlord's claim. The Tenant did not submit any evidence to show the condition of the carpets when she moved out.

Analysis

Section 57 (3) of the act says a Landlord can claim compensation for a tenant overholding in a rental unit for the time the Tenant over holds.

The Landlord and Tenant both agree the Tenant overheld in the rental unit from April 1, 2012 to April 7, 2012 and the parties agreed the amount of rent for this period would be \$212.50. I award the Landlord his monetary claim of \$212.50 for the Tenant overholding in the rental unit until April 7, 2012.

Further I find that as the carpets needed cleaning and because of the No contact Order of the Court the Landlord was not able to re-rent the unit until after May,1, 2012.

Consequently I find the Landlord has established grounds to be awarded lost rental income for the time period of April 7, 2012 to April 30, 2012 in the amount of \$637.50.

In addition I accept the Landlord's testimony and evidence that the carpets in the rental unit needed to be cleaned as the tenancy was for more than a year and the Tenant had two dogs. I accept the Landlord's carpet cleaning bill of \$448.00 and I award these costs to the Landlord.

With respect to the Tenant's application for the return of part of her security deposit in the amount of \$212.50. I find the following:

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and

- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenant's testimony and written evidence that she did give the Landlord a forwarding address in writing during the tenancy as her mailing address has not changed, therefore the Landlord had the Tenant's forwarding address at the end of the tenancy. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution by April 15, 2012. Consequently I find for the Tenant and grant an order for double the security deposit of \$425.00 in the amount of \$850.00 (2 X \$425.00).

As both the Landlord and the Tenant have been successful in this matter I order both the Landlord and Tenant to bear the costs of the filing fees that both of them have paid already.

In addition I order that the Landlord retain the Tenant's doubled security deposit in the amount of \$850.00 to satisfy the unpaid overholding rent and the loss of rental income for April, 2012 in the amount of \$850.00.

Further I award the Landlord the cost to have the carpets cleaned in the amount of \$448.00. The Landlord will receive a monetary order for the amount of \$448.00.

Conclusion

A monetary order has been issued to the Landlord in the amount of \$448.00.

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: April 08, 2013

Residential Tenancy Branch

