



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' file: MNDC, MNSD, FF

Landlords' file: MND, MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenants claimed for monetary compensation under the Act and tenancy agreement, for the return of the security deposit, and to recover the filing fee for the Application.

The Landlords claimed for cleaning of and damages to the rental unit, for unpaid rent, to keep all of the security deposit in partial satisfaction of the claims, 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 Issue

The Tenants were claiming for monetary compensation under the Act and tenancy agreement for ambulance service and other alleged losses, as a result of an alleged dog bite by the Landlords' dog. I dismissed this portion of the Tenants' Application, as the Act gives me no jurisdiction in this type of personal injury claim. The Tenants may seek legal advice on how to pursue such a claim against the Landlords.

Issue(s) to be Decided

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

Are the Landlords entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began on June 1, 2012, with the parties entering into a written tenancy agreement. The rent was to be \$650.00 per month, and according to the notes on the tenancy agreement, the Tenant paid a security deposit of \$325.00 and a pet damage deposit of \$75.00. I note the rental unit is a basement suite and the Landlords occupy the upper portion of the house.

Tenants' Security Deposit and Other Claims

The appearing Tenant testified that she paid the Landlords the security deposit twice: once by cheque and once by cash. The Tenant testified that an incoming condition inspection report was performed; however, the Tenant alleges she did not receive a copy of the report. The Tenant testified that no outgoing condition inspection report was performed.

The Tenant testified she moved out of the rental unit around the end of August or in September of 2012. She testified she provided the Landlords with the forwarding address to return the security deposit to, about three weeks after she moved out. The Tenant testified that she wrote the address in a letter and placed it in the Landlords' mailbox. The Tenant provided a copy of a letter in evidence that refers to an address being provided; however, I note no forwarding address is set out in the letter.

The Tenant is also claiming the Landlords illegally entered her rental unit and invaded her privacy. She alleges the Landlords would come into the rental unit at all hours of the night without warning. The Tenant was not sure of the dates when the Landlords allegedly entered illegally.

The Tenant also alleges that the Landlords took away her stove and she was unable to cook because of this.

Landlords' Reply to the Security Deposit and Other Claims of the Tenants

The appearing Landlord testified that the Tenants paid him the security deposit by cheque on May 27, 2012, although he believed that the cheque was returned by the bank due to insufficient funds in the Tenants' account. The Landlord spoke with the Tenant about this and testified that the Tenant paid him \$400.00 in cash right away for the security deposit and pet damage deposit. Later the Landlord realized that the Tenants' cheque had cleared and that he had made a mistake reading his account information, and he testified he thought he returned the \$400.00 cash to the Tenant the next day. The Tenant replied that she does not recall the Landlord returning the cash the next day, although she is certain the cheque was honoured by her bank.

The appearing Landlord testified that on May 31, 2012, a smoke alarm sounded in the rental unit and the Landlords went to investigate, as the alarm continued to ring. The Landlord testified they could smell a substance burning in the rental unit and in their own dwelling upstairs. The Landlords submitted that when they entered the rental unit they saw broken glass, a spoon and tinfoil on the stove top.

The Landlord testified he found the Tenant asleep in the rental unit with the stove on and it was very hot. The Landlord alleges the Tenant was cooking drugs on the stove. The Landlord further testified that he heard a big bang and the stove was mangled. He explained that is why he removed the stove from the rental unit and supplied the Tenant with a toaster oven for cooking on.

The Landlords also submitted that on June 27, 2012, the Tenant left the rental unit to go to the store and left 13 tea candles burning. According to the testimony of the Landlord the candles caused the Tenant's cell phone and papers to catch fire. The Landlord alleges that another renter who lives at the property entered the rental unit and put out the fire having been alerted by the smoke alarm. When the Landlords went into the rental unit they found the stove on, with two knives stuck under the burners and the 13 candles, along with the damaged cell phone and papers.

The Landlords sent the Tenants letters after both of these instances, copies of which were provided in evidence by the Landlords.

The Landlords allege the appearing Tenant is a drug addict, and that they had several conversations with the appearing Tenant's mother. The Landlords allege that through these conversations they learned the Tenant has a sickness which requires her to use morphine on a daily basis.

In reply to the Landlords, the appearing Tenant explained she does not do illegal drugs, nor did she cook drugs on the stove in the rental unit. The Tenant supplied copies of prescriptions for Hydromorphone and for Dilaudid in evidence, to indicate the drugs she was using were provided by prescription.

Both parties described police attendances at the rental unit while the Tenants were occupying it. Both parties testified that they had called the police to attend.

Landlords' Monetary Claims

The Landlords allege that the Tenants left the rental unit a few days before August 27, 2012. The Landlords claim they were paid no rent for July and August of 2012, and claim \$1,300.00 in rent for the two months.

The Landlords allege the Tenants' dog urinated and defecated on the rental unit carpets, and they found blood on the carpet, and these had to be replaced. The Landlords claim \$879.00 for this. The Landlord testified they paid cash for the rug and have no receipt for it.

The Landlords also claim \$1,000.00 for painting and repairs at the rental unit, consisting of patching walls, and painting walls and the trim. The Landlords supplied a receipt in the amount of \$1,000.00 for this work. The Landlords claim the Tenants and their dog damaged the walls and window blinds in the rental unit.

In support of their claims, and in addition to the documents described above, the Landlords have supplied in evidence copies of: a receipt to the Tenants for \$400.00 for payment of the security deposit, a self-made inspection sheet for the rental unit, the subject tenancy agreement, copies of letters sent to the Tenants regarding alleged illegal activities in the property, a police officers' business card with an incident report number, a one month Notice to End Tenancy for cause, a tenancy agreement ostensibly between the Tenant and a different property owner for September 1, 2012, receipts and documents used with other renters in the rental unit building, and several documents regarding the alleged dog bite.

Tenants' Reply to Landlords' Claims

The Tenants deny all the Landlords' claims. The Appearing Tenant testified that there was nothing wrong with the rental unit when she left it. The Tenant testified they had paid all the rent due to the Landlords, but the Landlords never gave them a receipt for anything.

The appearing Tenant further alleged that the police had inspected the rental unit and did not indicate to her there was anything wrong with the rental unit.

The Tenant denies harming the paint in the rental unit. She testified it was “normal paint” and they were satisfied with the rental unit paint at the start of the tenancy.

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, applicants 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.

The burden of proof is on the respective Applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Respondent. Once that has been established, the Applicants 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.

Tenants' Security Deposit and Other Claims

I find the Landlords had insufficient evidence to prove they had returned \$400.00 in cash to the Tenants as a result of them paying the security deposit twice. I base this on

the Landlords' pattern of documenting this tenancy and of their demonstrated record keeping skills.

The Landlords exhibit a pattern of carefully recording the transactions made between them and these Tenants and the other renters the Landlords have dealt with. I find it unlikely that the Landlords would not have recorded the fact they returned the cash deposit payment to the Tenants. Therefore, I find that the Tenants have established that the Landlords are holding \$800.00 as security and pet damage deposits. I will deal with the disposition of these deposits below, in the Landlords' claims.

I do not find these circumstances allow the Tenants to collect double the security and pet damage deposits. I find the Tenants had insufficient evidence they had ever supplied the Landlords with the forwarding address to return the security and pet deposits to, as required under the Act. The letter they supplied in evidence refers to an address being provided, but in fact the letter contains no address. Therefore, the Tenants failed to prove the Landlords had not returned the deposits or filed a claim against these, within 15 days of receipt of the forwarding address.

I dismiss all the other claims of the Tenants. While the removal of the stove likely caused the Tenants to suffer an inconvenience, the Tenants had not provided any evidence of a loss or extra costs incurred because of this. I accept that the Landlords provided a toaster oven, which is not a replacement for a stove; however, the Tenants failed to prove how this caused them a financial loss.

In regard to the Landlords allegedly entering the rental unit illegally, there was only evidence of two instances provided during the hearing where the Landlords entered the rental unit without using the required 24 hour notice. Nevertheless, under section 29(1)(f) of the Act the Landlords were entitled to enter the rental unit on the basis of an emergency where it is necessary to protect life or property. I find the Landlords entered the rental unit on this basis, and therefore, these were not illegal entries.

For the above reasons, I dismiss these claims of the Tenants.

Landlords' Monetary Claims

As described above, I find the Landlords exhibit a pattern of carefully recording the transactions made between them and these Tenants and the other renters the Landlords have dealt with. I find it more likely than not that if the Tenants had paid the rent for July and August the Landlords would have issued a receipt, just as they have done in their other transactions. Furthermore, I find the Tenants had insufficient evidence that the rents for these two months had been paid, such as banking records or

cancelled cheques. I find on a balance of probabilities that the Tenants paid no rent for July and August of 2012, and I allow the Landlords' claim for \$1,300.00 in rent for the two months.

I dismiss the Landlords' claims for the replacement of carpets. I find the Landlords had insufficient evidence, such as photographs or a report that the carpets could not be professionally cleaned, regarding the condition of the carpets at the end of the tenancy. There was simply not enough evidence provided to determine what was wrong with the carpets, or if the Tenants had caused the alleged damage.

Likewise the Landlords did not have sufficient evidence to support the \$1,000.00 for painting and repairs claimed. They had insufficient evidence to prove what was wrong with the walls and other items, or that the Tenants caused the alleged damage.

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I have found the breaches by the Tenants in failing to pay rent have caused the Landlords to suffer a loss.

I find the Landlords have established a total claim in the amount of **\$1,350.00**, comprised of two months' rent and the \$50.00 filing fee for the Application.

I order that the Landlords may retain the security and pet damage deposits of \$800.00 in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$550.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants established that they paid the Landlords \$800.00 in security and pet damage deposits. The Tenants had insufficient evidence or failed to prove their other claims and these are dismissed without leave to reapply.

The Landlords established a claim for unpaid rent and the return of the filing fee for the Application. The other claims of the Landlords were dismissed due to insufficient evidence.

The Landlords may keep the \$800.00 in deposits in partial satisfaction of the claim, and have a monetary order for the balance due of **\$550.00**

This decision is final and binding on the parties, unless 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 Act.

Dated: May 08, 2013

Residential Tenancy Branch