



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Raymar Realty Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, and to recover the filing fee.

The tenants and an agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenants confirmed receiving the evidence from the landlord and that they had the opportunity to review that evidence. The tenants' evidence was submitted late and not in accordance with the rules of procedure, and was excluded from the hearing has a result.

Preliminary and Procedural Matters

During the hearing, the tenants requested to have their late application "joined" to the landlord's application as they submitted a late "joinder" application. The tenants were advised that had they submitted their own application within the required timelines, their application would have been considered a "cross application" and would have been heard at the same time as the landlord's application. However, in the matter before me, only the landlord submitted an application. Therefore, the tenants request to "join" the file is denied as the correct process is for the tenants to submit their own application under the *Act*. The tenants are at liberty to submit their own application; however, the only application before me during this proceeding is the landlord's application. As a result, this hearing continued with consideration of the landlord's application only.

During the hearing, the agent withdrew the \$43.50 utility bill claim as the agent confirmed he had an invoice from the tenants showing that the utilities had been paid for the month the landlord was claiming. Therefore, the agent reduced his monetary claim from \$403.70 to \$360.70 which was permitted as a reduction in the monetary claim does not prejudice the tenants. The landlord is also seeking the recovery of the filing fee.

Issues to be Decided

- Should the landlord be granted a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A fixed term tenancy agreement began on November 1, 2012 and was to revert to a month to month tenancy after April 30, 2013. Monthly rent in the amount \$1,050.00 was due on the first day of each month. The parties also agree that the tenants paid \$15.00 per month for parking. A security deposit in the amount of \$525.00 was paid by the tenants at the start of the tenancy.

The tenants confirmed that they were served with an order of possession effective January 31, 2013 at 1:00 p.m. The tenants stated that the landlord verbally agreed to allow them to remain in the rental unit until February 10, 2013 without having to pay rent for those 10 days the tenants remained in the rental unit after the effective date of the order of possession. The agent denied that such agreement was made with the tenants. The landlord is seeking 10 days of pro-rated rent in the amount of \$345.20 for the 10 days the tenants remained in the rental unit beyond the order of possession date, the \$15.00 parking fee for February, and the recovery of the \$50.00 filing fee.

The agent testified that the only arrangement he made with the tenants was that he would not charge the tenants for carpet cleaning or drape cleaning, which the landlord has not claimed for in this application. The landlord stated that he arrived at the amount of \$345.20 for pro-rated rent by taking the monthly rent of \$1,050.00 and multiplying that amount by 12 months (\$12,600.00) and then dividing \$12,600.00 by 365 days to create a per diem rent amount of \$34.52 per day. Finally, the landlord took \$34.52 and multiplied that amount by 10 days as the tenants did not vacate the rental unit until February 10, 2013. The tenants provided their written forwarding address on the

condition inspection report on February 10, 2013, the same day the tenants vacated the rental unit.

The tenants had no witnesses or documentary evidence to support that the landlord agreed for the tenants to remain in the rental unit from February 1, 2013 to February 10, 2013 without having to pay pro-rated rent. The agent stated that he was trying to be reasonable with the tenants by giving them extra time to find a new residence and would not charge them for carpet cleaning or drape cleaning, but that the tenants were still required to pay rent for the days they were occupying the rental unit in February 2013.

The parties confirmed that the landlord returned \$121.30 of the tenants' original \$525.00 security deposit, leaving a balance of \$403.70 which the agent stated that he continues to hold. The landlord filed to retain a portion of the tenants' security deposit on February 25, 2013.

The landlord provided a copy of the tenancy agreement, order of possession, security deposit refund form, monetary worksheet and condition inspection report. All relevant evidence has been considered in this Decision.

Analysis

Based on details of the application and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Monetary claim of landlord – The agent testified that the tenants failed to pay pro-rated rent for February 2013. The tenants alleged that the landlord verbally agreed to permit them to remain in the rental unit for 10 extra days without having to pay any rent. The agent disputed the tenants' testimony by stating that the only arrangement made with the tenants was to not charge the tenants for carpet cleaning or drape cleaning.

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. Based on the above, I am unable to enforce a verbal agreement when one of the parties disputes the other party. Therefore, pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement.

Based on the above, **I find** the tenants were overholding in the rental unit from February 1, 2013 to February 10, 2013 inclusive, and that the landlord suffered a loss as a result.

Furthermore, the parties confirmed that monthly parking of \$15.00 was to be paid by the tenants, which was not paid for the month of February 2013. Therefore, **I find** the landlord has met the burden of proof and **I grant** the landlord **\$345.20** for loss of rent for the 10 days in February 2013 that the tenants remained in the rental unit beyond the order of possession date which became effective January 31, 2013 at 1:00 p.m., plus the **\$15.00** parking fee for the month of February 2013 as claimed.

As the landlord's application had merit, **I grant** the landlord the recovery of the **\$50.00** filing fee.

Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) 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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

The landlord filed their application on time claiming towards the tenants' security deposit as the tenancy ended on February 10, 2013 and the tenants provided their written forwarding address to the landlord on the same date. Based on the above, **I find** the landlord complied with section 38 of the *Act*.

Monetary Order – I find that the landlord is entitled to a monetary claim of **\$410.20** comprised of \$345.20 for the loss of rent for February 1-10, 2013, inclusive, and \$15.00 for February 2013 parking, plus the \$50.00 filing fee. This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the remainder of the tenants' security deposit which the landlord continues to hold in the amount of \$403.70, as the tenants' confirmed that they have already received \$121.30 from the landlord of the original \$525.00 security deposit which has accrued no interest to date.

I authorize the landlord to retain the full remainder of the tenants' security deposit in the amount of \$403.70 in partial satisfaction of the landlord's monetary claim, and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$6.50**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord has established a total monetary claim of \$410.20 as indicated above. I authorize the landlord to retain the remainder of the tenants' security deposit which the landlord continues to hold in the amount of \$403.70 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$6.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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 *Residential Tenancy Act*.

Dated: June 3, 2013

Residential Tenancy Branch