



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlords for the cost of the application. The details portion of the tenants' application states that the tenants claim double the amount of the security deposit.

Both tenants and both landlords attended the conference call hearing and the tenants called one witness. The parties also provided evidentiary material in advance of the hearing, however, some evidence provided by the landlords was not received by the Residential Tenancy Branch within the time specified by the Residential Tenancy Act and Rules of Procedure, and that evidence was not received by the tenants. The landlords did not have evidence provided by the tenants, however, the tenants provided the evidence on time and provided a registered mail tracking number as evidence of having sent it to the landlords within time. All evidence, with the exception of the landlords' evidence has been reviewed and is considered in this Decision.

The parties and the witness gave affirmed testimony and the parties were given the opportunity to cross examine each other.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the pet damage deposit or security deposit?

Background and Evidence

The first tenant testified that this month-to-month tenancy began on June 1, 2012 and ended on December 31, 2012. Rent in the amount of \$1,000.00 per month was payable on the first day of each month, although there is no written tenancy agreement, and there are no rental arrears. Sometime during mid-June, 2012 the landlords collected a security deposit from the tenants in the amount of \$500.00 which is still held in trust by the landlords. No move-in or move-out condition inspection reports were completed.

The tenant further testified that a notice to end tenancy was provided to the landlords and the landlords were provided with the tenants' forwarding address by way of a text message. The landlords responded to that the same day by way of return text message. A copy of strings of text messages have been provided, which include messages to one of the landlords' name and one of the tenants' name. One of those messages contains a mailing address.

The tenant further testified that the tenants moved out on December 28, 2012. The tenant's in-laws went back to the rental unit to retrieve the balance of belongings and spoke with the landlords who advised that there were no issues and there would be no charges to the security deposit. The in-law provided a witness letter to that effect.

The tenant also sent a letter to the landlords by registered mail on January 16, 2013. The tenant did not keep a copy but testified that the letter requests return of the \$500.00 security deposit, and the tenant provided a copy of the Registered Mail ticket receipt.

The other tenant testified that the entire tenancy was based on a verbal contract and cash.

The first landlord testified that there were no issues throughout the tenancy. When the tenants moved out they didn't have much time to get packed. A relative attended to pick up some items left behind and the landlord helped load furniture.

When the landlords attended the rental unit they didn't have any cleaning supplies with them. The agreement was that the tenants would leave the rental unit the same as when they moved in. The fridge, stove and bathroom were not cleaned and the floors were not swept, and the tenants were told that there were no issues except for cleaning, even though the landlord had to re-install the original fan in the bedroom at a cost to the landlords.

The landlord further testified that there is no evidence that any security deposit was paid or how much. During cross examination, the landlord testified that cash was given, but the landlord didn't see how much was in the envelope and didn't check to see if it was rent or a security deposit or both.

The other landlord testified that it was disrespectful leaving the rental unit the way it was left by the tenants at the end of the tenancy.

The landlord also testified to receiving rent in cash every month from the tenants and no receipts were provided or requested.

Analysis

The *Residential Tenancy Act* requires a landlord to give a receipt for every rent payment or security deposit payment made in cash. In this case, the landlords admit that no receipts were given and all rent was paid in cash. I find it very convenient that neither landlord can say how much money was in any of the envelopes. The landlords do not deny that a security deposit was paid, and the tenant testified that the amount was \$500.00 and I find it reasonable since it is customary to collect one half a month's rent. The text messages also indicate discussions about a security deposit in that amount.

A landlord may not arbitrarily decide to keep a security deposit, even if there are damages to the rental unit at the end of a tenancy. The *Act* requires a landlord to return a security deposit in full to a tenant or apply for dispute resolution to keep it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so, the landlord must be ordered to repay the tenant double the amount.

In this case, I find that the tenancy ended on December 31, 2012 and the landlords received the tenants' forwarding address in writing via text message. A copy was provided for this hearing, but it is not dated. The tenant also testified to sending a copy by registered mail to the landlords on January 16, 2013 and provided a copy of the Registered Mail ticket receipt as evidence. I accept that testimony, and under the *Act*, documents served by registered mail are deemed to have been received 5 days after mailing, which I find is February 5, 2013. The landlords have not returned any portion of the security deposit, and I find that the tenants are entitled to double recovery of the \$500.00 security deposit and recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,050.00.

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: May 24, 2013

Residential Tenancy Branch

