



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing was convened upon the application of the tenants seeking a monetary order for compensation for damage and/or loss and for double the security deposit. The total sum sought by the tenants is \$2,400.00 plus the \$50.00 filing fee.

Both parties appeared at the hearing and gave evidence under oath.

Background Summary

The tenant testified that this tenancy began on July 1, 2009 and ended on March 3, 2010. She later corrected this to say that it ended March 3, 2011. The tenancy agreement shows that rent of \$1,400.00 was payable in advance on the first of each month. The tenancy agreement also indicates that the tenants paid a security deposit of \$1,400.00 as "last months" rent and that an \$800.00 damage deposit was also due.

The tenant testified that the tenancy ended because the landlords served a Notice to End Tenancy for Landlord's Use. The tenant says that she understands that when such a notice is served tenants are entitled to compensation of one month rent free.

The tenant agrees that the landlord did not cash March's rent cheque and, after the tenancy ended, the landlords sent them \$2,009.68. This sum included rent of \$1,309.68 and a \$700.00 security deposit. However, the tenant maintains that the return of \$1,309.68 does not constitute having been provided with adequate compensation as required by the Act because at move-in the tenants had already paid the last months' rent. The tenant submits that they are therefore entitled to recover 2 months' rent.

With respect to the security deposit, the tenant says the landlord returned \$700.00 of the \$800.00 deposit they paid. The tenant submits that 15 days have long passed since they provided their forwarding address to the landlords on the Condition Inspection

Report. The tenant provided the subject Condition Inspection Report which she says was prepared at move-out on March 3, 2011 and signed by the landlord indicating that no deduction would be made from the security deposit. The tenant says the Act states that because the landlords did not return their full deposit, they are entitled to \$1,000.00.

Counsel for the landlord agrees that the tenancy ended in 2011 not 2010. Counsel noted that the tenant's own calculation of the sums involved show that the tenants have recovered their "last month rent" in that the landlords did not cash March's rent cheque. Further, that the tenant has acknowledged receiving a payment from the landlords of \$2,009.68 which sum represented a \$700.00 security deposit and one months' rental compensation of \$1,309.68 as agreed between the parties.

With respect to the agreed sums and the date on which the forwarding address was provided, counsel for the landlords noted an email discussion submitted into evidence which shows the female tenant wrote to the landlord on March 19, 2011 providing her forwarding address and stating "The total amount to be returned to us is \$700 + \$1,309.68 = \$2,009.68."

The tenant did not dispute the contents of the email but says that she was confused when she stated she would accept \$700.00 as the actual security deposit was \$800.00. The tenant says she did not have her tenancy agreement in front of her to check the sums when she wrote this email.

Findings

With respect to the security deposit, Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord **must** pay the tenant double the amount of the deposit (Section 38(6)).

With respect to the provision of the forwarding address on March 3, 2011 and the tenants' claim that the landlord agreed to make no deduction from the deposit the tenant submitted a Condition Inspection Report. The report is almost entirely incomplete. It does not show who the landlords are, what their address is, the date the rental unit would be possessed by the tenants or the date the move-in inspection was performed. There are no details whatsoever as to the condition of the rental unit at either move-in or move-out. The only details in the report are a note that "0" would be deducted from

security deposit and the tenants' forwarding address is provided. There are signatures on the report at move-out however due to the complete lack of details in the body of the document I am not satisfied that this report is sufficiently complete and accurate; nor am I satisfied as to its authenticity.

With respect to the date upon which the forwarding address was provided and the amount of security deposit to be returned, I accept the email sent by the tenants on March 19, 2011 to the landlords. In that email the female tenant provides her forwarding address and states: "The total amount to be returned to us is \$700 + \$1309.68 = \$2009.68". I find that this undisputed email shows that the tenant was accepting that the full deposit of \$800.00 was not going to be returned to her. It may be so that she made a mistake in typing \$700.00 as opposed to \$800.00 however in so doing I find that she agreed to accept \$700.00 and I accept the evidence of the landlord that this sum was returned within 15 days of March 19, 2011.

With respect to one months' compensation, I also accept the email dated March 19, 2011 sent to the landlords by the female tenant stating: "We have been fully moved out of your house since March 2..." Under the tenancy agreement rent was due and payable on the first of the month and, having resided in the rental unit until either March 2 (as the tenant stated in the email) or until March 3 (as the tenant stated at the hearing) the tenants would have been required to pay March's rent. However, the tenants did not pay March's rent and they accepted a payment of \$1,309.68 in compensation therefor.

With respect to the return of the last months' rent paid in advance. I accept the evidence of both parties that the landlords did not cash March's rent cheque. I find this action, which was in addition to paying \$1,309.68, to be reimbursement for the advance rental payment. For future reference the landlords should note that the only sums that can be collected in advance at the start of a tenancy are set out in the Act and they include only a security and pet deposit each amounting to no more than one-half of a months' rent and nothing more.

Finally, I note that the undisputed evidence shows that this tenancy ended on March 3, 2011. Applications for Dispute Resolution under the *Residential Tenancy Act* must be filed within 2 years of the date upon which the tenancy ended. This application was not filed until March 5, 2013 and is therefore out of time.

Based on all of the above, the tenants' application is dismissed including their application to recover the filing fee.

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 27, 2013

Residential Tenancy Branch

