



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNSD, FF

For the landlords – MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to recover double the security deposit and to recover the filing fee from the landlords for the cost of this application. The landlord applied for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for double the security deposit?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on August 01, 2012 for a fixed term that had an expiry date of July 31, 2013. Rent for this unit was \$1,175.00 per month of which \$75.00 was the rental for the garage. Rent was due on the first day of each month in advance. The tenants' paid a security deposit of \$550.00 on July 22, 2012.

The tenants testify that they vacated the unit on February 28, 2013 and gave the landlords their forwarding address in writing on March 01, 2013. The tenants' testify that they have not given the landlord permission to deduct any amounts from the security deposit and the signature on that section of the move out condition inspection report is the male landlord's signature.

The tenant therefore request an Order for double the security deposit to the amount of \$1,100.00 as the landlords have not returned the security deposit within 15 days of receiving the tenants forwarding address. The tenants also seek to recover their \$50.00 filing fee.

The landlord attending testifies that her husband, the other landlord, did the move out inspection with the tenants. The landlord testifies that her husband had informed her that the female tenant had signed the inspection form agreeing that the landlord could keep the security deposit. The landlord agrees on closer inspection that the signature is not the tenants. The landlord testifies that this is why they did not return the security deposit or apply to keep it.

The landlord testifies that the tenants gave notice to end their tenancy on January 31, 2013. The landlords were hoping to get the unit re-rented for March 01, 2013 and despite advertising and showing the unit many times the unit was not re-rented until April 15, 2013. The landlord testifies that they had to lower the rent to \$1,000.00 in order to get the unit rented as quickly as possible.

The landlords seek therefore to recover half a month's rent for April, 2013 of \$587.50. The landlords testifies that as this was a fixed term tenancy the landlords also seek to recover the difference in rent of \$175.00 for the three months up until the end of the fixed term to an amount of \$525.00.

The landlord testifies that there is a clause in the tenancy agreement that states the tenants must have the blinds professionally cleaned. The landlord testifies that although the blinds were not left dirty this is something the landlords do to maintain consistence for all tenants. The landlord testifies that the tenants did pay \$96.32 for this work however the cleaning bill came in slightly higher at \$115.92. The landlord testifies that they therefore seek to recover the balance for the cleaning of \$19.60.

The landlord testifies that contained within the tenancy agreement is a clause which informs the tenants that a liquidated damages fee of \$550.00 will be applied if the tenants end the tenancy before the end of the fixed term. The landlord testifies that this fee is to cover the advertising costs and the landlords' time and effort in re-renting the unit. The landlord testifies that this fee was not added in the monetary claim as the landlords had thought the tenants' had agreed the landlords could keep the security deposit to cover this fee. The landlord testifies that it cost approximately \$300.00 in advertising costs and the landlords had to show the unit 30 to 40 times between February and March 21. This required a considerable amount of the landlords' time.

The tenants dispute the landlords claim for rent. The tenants testify that as \$75.00 of their rent was for the garage this should not be included in any loss of rent charges by the landlord for the loss of rent. The tenants dispute the landlords claim for liquidated damages. The tenants testify that they asked the landlords to show them the receipts for the advertising but the landlords did not provide these. The tenants also dispute the landlords claim for the balance of \$19.60 for cleaning the blinds. The tenants testify that they had left the blinds clean at the end of the tenancy; they state they were not smokers and had not lived in the unit for more than a year. The tenant testifies that they had agreed to pay the \$96.32 but dispute having to pay anything extra. The tenants also

refer to the blind cleaning invoice which indicates that \$20.00 of this cost was to realign the blinds and was not for cleaning. The tenants testify that they had informed the landlord during their tenancy that the blinds required realigning and this was not the tenant's reasonability.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I will deal first with the tenants application and I refer the parties to Section 38(1) of the *Act* that says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address in writing on March 01, 2013. The landlord argues that they thought the tenants had signed the move out inspection report agreeing the landlords could keep the security deposit. I have considered the signature on this report and find this is clearly the male landlords name and not that of the tenants. The landlords should have checked this report to ensure the tenants had signed it without assuming one of the tenants had done so. As a result, the landlords had until March 16, 2013 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the security deposit and have not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenants have established a claim for the return of double the security deposit to the amount of **\$1,100.00** pursuant to section 38(6)(b) of the *Act*.

With regard to the landlords application for a Monetary Order for unpaid rent; I refer the parties to s.45(2) of the *Act* which states:

2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenants breached the tenancy agreement by ending the tenant before the end of the fixed term. I am satisfied from the evidence presented that the landlord made every attempt to get the unit re-rented as quickly as possible to mitigate the loss and the unit was only rented from April 15, 2013. I therefore find the landlord is entitled to recover a loss of rent from April 01, to April 15, 2013. The tenants argue that the rent should not include the \$75.00 for the garage rental. However as this is part of the tenancy agreement and is located at the property I find the landlords are entitled to recover the additional \$75.00 for the garage. The landlords have therefore established a claim to recover the amount of **\$587.50**.

I further find that as this was a fixed term tenancy a landlord is entitled to recover any further losses of rent if the unit was re-rented for a lesser amount. In this case the landlords have shown that they attempted to get the full rent but had to reduce the rent in increments in order to get the unit re-rented quickly. As the unit was eventually re-rented for \$1,000.00 per month I find the landlord is entitled to recover the loss of \$175.00 per month up until the end of the fixed term. The landlords have therefore established a claim to recover the amount of **\$525.00**.

With regard to the landlords request to amend their claim to recover the liquidated damages of \$550.00; I find the tenants were aware that this charge could be applied if they ended the tenancy before the end of the fixed term. The tenants argue that the landlords' costs are considerably less than the amount the landlords want to charge the tenants. When a clause of this nature is included on a tenancy agreement it must be a genuine pre-estimate of the loss at the time the contract is entered into. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

It is my decision that this amount is a genuine pre-estimate for costs incurred by the landlords to re-rent the unit. The landlords have incurred actual costs in re-advertising and in their time and effort to show the unit, run checks on prospective tenants and re-rent the unit. I therefore find in favor of the landlords request to amend their application to include this charge and award this amount of **\$550.00** to the landlords.

With regard to the landlords claim for additional costs for cleaning the blind; this section of the landlords claim must fail. I am not satisfied that the tenants are responsible for cleaning blinds professional as the *Act* only stipulates that a tenant must leave the rental unit in a reasonably clean condition. The landlord agrees that the blinds were left clean and I find this term in the tenancy agreement to be unconscionable with the *Act*. I therefore dismiss this section of the landlords claim.

As the tenants have been successful with their claim and the landlords have been largely successful I find each party must bear the cost of filing their own application.

I have offset the tenants claim against that of the landlords and award the landlords a Monetary Order for the balance as follows:

Loss of rent for April	\$587.50
Loss of rent for three months	\$525.00
Liquidated damages	\$550.00

Total amount awarded to the landlord	\$1662.50
Total amount awarded to the tenants	\$1,100.00
Offset tenants award against landlords balance due to the landlord	\$562.50

Conclusion

I HEREBY find in favor of the tenants' application and largely in favor of the landlords application. The tenants' award of \$1,100.00 has been offset against the landlords' award of \$1,662.50

A copy of the landlords' decision will be accompanied by a Monetary Order for \$562.50. The order must be served on the tenants and is enforceable through the Provincial Court as an order of that Court.

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: June 14, 2013

Residential Tenancy Branch

