



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The landlord's application is a request for a monetary order for \$829.50 and a request to retain the full security deposit towards that claim.

The tenant's application is a request for order for return of double their security deposit.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the landlord established a monetary claim against the tenants in the amount of \$829.50?

Are the tenants entitled to an order for return of double their security deposit?

Landlord's application

Background and Evidence

The landlords testified that:

- On approximately April 13, 2013 the tenants gave notice that they would be vacating the rental unit on May 15, 2013.
- The tenant subsequently informed them that they were putting a stop payment on the May 2013 rent cheque and would be issuing another cheque for one half months rent. I requested that they put that information in writing but they refused to do so.
- The tenants never gave him written confirmation that they were putting a stop payment on the cheque and therefore he attempted to deposit it, however it was refused by the bank.
- Since the tenants did not give the required one clear month Notice to End Tenancy I lost rental revenue for the last half of May 2013.
- The tenants also failed to pay the May 2013 rent until May 21st 2013 and therefore I'm charging 21 days late fees.
- The tenants also left an extensive amount of belongings behind at the rental property that he had to remove and clean up, and he has estimated cost to do so is \$300.00.

- He is also requesting the cost of photographs and photocopying and the cost of serving documents for today's hearing.

Therefore the total amount that he is requesting is as follows:

Lost rental revenue for ½ of May 2013	\$437.50
Service charge for dishonored cheque	\$20.00
Late payment charges	\$42.00
Estimated cleaning costs	\$300.00
Photos, photocopying etc.	\$30.00
Filing fee	\$50.00
Total	\$879.50

The tenants testified that:

- They did give notice on April 13, 2013 to end the tenancy on May 15, 2013, however the landlord took the last two months of May 2013 to do renovations in the rental unit and therefore it was not available to re-rent. They therefore do not believe that they should have to pay for lost rental revenue for the last half of May 2013.
- They also don't believe they should have to pay for the dishonored cheque as they informed the landlord that they were putting a stop payment on that cheque and would be issuing a new one. It was the landlord's choice to deposit the cheque anyway.
- They're not sure exactly when they did pay the May 2013 rent however they don't dispute that it was late.
- They do dispute the landlord's claims for cleaning, as they removed all of their belongings from the rental property. The only items they left behind were items that were on the property when they moved in, in 2005.
- No move in inspection report was done at the beginning of the tenancy, nor was there a move out inspection report done at the end of the tenancy, and had those reports been done they would be able to prove that they removed all of their belongings and left the rental property in good condition.

- The landlord never even asked them to participate in the move out inspection.
- They therefore believe that the landlord's full claim, other than the late payment charge, should be dismissed and that the remainder of their security deposit plus interest should be returned.

In response to the tenant's testimony the landlords testified that:

- They did use the last two weeks of May 2013 to do renovations in the rental unit which included replacing a small portion of drywall, replacing the carpets, and repainting the whole unit however if they'd been able to find a renter they would've re-rented the unit for May 15, 2013.
- They believe the tenant should pay the dishonored cheque fee, as they refused to give them written confirmation that a stop payment was being put on the cheque.
- The tenants did not remove all their belongings and they therefore still request the \$300.00 for cleaning up the tenants belongings.
- He admits that no move in inspection report was done, however the reason he didn't do a move out inspection report is because the tenant said he did not want to speak to him anymore.
- He does not recall whether or not he requested that the tenant participate in a move-out inspection.

Analysis

May 2013 lost rental revenue

The tenants did not give the required one clear month notice to end tenancy however it is my decision that I will not allow the claim for loss rental revenue for May 2013, because the landlord has admitted that they used that two week period to do renovations to the rental unit. Therefore since the unit was being renovated, it's my

finding it was not available to re-rent and therefore the tenants cannot be held liable for any lost rental revenue.

Returned cheque service charge

I also deny the landlords request for the returned cheque service charge, because the landlord admitted at the hearing that the tenant verbally informed him that a stop payment had been put on that cheque and a new cheque would be re-issued.

Late payment charge

The tenants do not dispute that rent was paid late for the month of May 2013 and therefore I will allow a late payment charge for the month of May 2013, however the Residential Tenancy Regulations limit that charge to \$25.00 and therefore that is the amount that I will allow.

Cleaning charges

I deny the landlords claim for cleaning charges as it's my finding that the landlord has not met the burden of proving this portion of the claim.

No move in inspection report or move out inspection report was done, and therefore there is no way to compare whether or not the property was left in the same condition on move out as it was received on move in.

Therefore it is just the landlords word against that of the tenants and in this case the tenants claim that they removed all of their belongings from the rental property and that anything left behind was already there at the beginning of the tenancy.

The burden of proving a claim lies with the applicants and when it is just the applicant's word against that of the respondents that burden of proof is not met.

Photographs, photocopying etc.

These items are cost of the dispute resolution process and I have no authority to award costs other than the filing fee. Therefore I will not allow this portion of the claim.

Filing fee

I have only allowed \$25.00 of the landlords claim and therefore it's my decision that the landlord must bear the \$50.00 cost of their filing fee.

Tenant's application

Having only allowed \$25.00 of the landlords claim, it's my finding that the landlords must return the remainder of the tenant's security deposit plus interest. The tenants paid a deposit of \$362.50, and interest accrued at the government rate totals \$12.84, and therefore the landlord must return \$375.34, minus the \$25.00 I allowed, for a difference of \$350.34.

I will not allow the tenants request for double the security deposit, because the landlords applied for dispute resolution within the 15 day time limit required.

I will however allow the tenants request for the cost of their filing fee as I have allowed a large portion of their claim.

Therefore the total amount the landlords must pay to the tenants is \$400.34

Conclusion

As stated above I allowed \$25.00 of the landlords claim, and that amount has been deducted from the amount I have allowed in the tenants claim. The remainder of the landlords claim is dismissed without leave to reapply.

I have issued an order for the landlord to pay \$400.34 to the tenants, and the remainder of the tenants claim is dismissed without leave to reapply.

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: September 04, 2013

Residential Tenancy Branch

