



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNSD, FF
 Landlord MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for unpaid rent, damage to the unit, site or property, compensation for damage or loss under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of double the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery on September 9, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on August 29, 2013, in accordance with section 89 of the Act.

The Landlord and Tenants both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Is the Landlord entitled to unpaid rent and if so how much?
3. Are there damages to the unit, site or property and if so, how much?
4. Is the Landlord entitled to compensation for damage and if so how much?
5. Is the Landlord entitled to compensation for loss or damages and if so how much?
6. Is the Landlord entitled to retain the Tenants' deposit?

Tenant:

1. Are the Tenants entitled to recover double the security deposit?

Background and Evidence

This tenancy started on September 1, 2011 as a month to month tenancy. The Tenant said there was no written tenancy agreement. Rent was \$1,600.00 per month for the house and \$400.00 per month for the quonset building and pasture, payable in advance of the 1st day of each month. The Tenants said total rent was \$2,000.00 per month. The Tenant paid a security deposit of \$1,000.00 on August 29, 2011.

The Tenant said The Landlord issued a Notice to End Tenancy for Cause to them, which they disputed and the Notice was cancelled. Following the cancelation of the Notice to End Tenancy the Tenant gave the Landlord notice at the end of May, 2013 that she was ending the tenancy June 30, 2013. The Tenant moved out of the rental unit on June 30, 2013. The Landlord accepted the Tenants' Notice to End the Tenancy and the tenancy ended on June 30, 2013. The Tenant continued to say that no move in or move out condition inspections were done, they gave the Landlord their forwarding address in writing on August 8, 2013. The Landlord agreed no condition inspection reports were completed as he was unaware the reports had to be done. The Tenant continued to say they kept the unit in good condition throughout the tenancy and the rental unit was cleaned and in better condition on their move out than on their move in. The Tenant provided photographs of the condition of the unit as of June 30, 2013 the move out date.

The Tenant said they wrote the Landlord a letter dated August 8, 2013 in which they requested their security deposit to be returned. The Tenant said they have not received their security deposit back and as a result they were told by the Residential Tenancy Branch, that they could apply for double the security deposit. The Tenant said they are requesting 2 X \$1,000.00 or \$2,000.00 as well as the filing fee for this proceeding of \$50.00.

The Landlord said the Tenants operated an illegal dog kennel in the rental unit and as a result the rental unit had considerable damage to it. In addition the Landlord said the Tenants did not pay \$400.00 of the rent for June, 2013. The Landlord continued to say he has made an application for the following compensation for damages:

1).	Removal of manure from pasture	\$ 73.50
2).	Door Replacement	\$ 151.20
3).	Vacuum replacement	\$ 402.65
4).	Damage to house siding	\$ 50.00
5).	Carpet replacement	\$ 150.00
6).	Fence replacement	\$ 400.00
7).	Hardwood floor replacement	\$2,000.00
8).	Door frame replacement	\$ 500.00
9).	Door painting	\$ 50.00
Total		\$3,777.35

The Landlord continued to say that he has only paid the manure removal costs to date and the other claims are all quotes or estimates to do the work. The Landlord said he understood that this is what was required to make the application. As well the Landlord said the damage he is claiming is only part of the damage to the rental unit that was caused by the Tenants.

The Tenants said they had the approval of the Landlord to operate a dog business out of the rental unit and they left the unit in better condition than it was at the start of the tenancy.

Both parties provided photographic evidence to show the condition of the rental unit at the end of the Tenancy.

The Landlord said in closing that he did not agree to a dog kennel operating in his rental unit and the damage the Tenants caused was extensive. The Landlord was made aware that damages can only be awarded if a loss is proven by a paid receipt and the Landlord proves the loss was caused solely by the Tenants. The Landlord said he understood this and he understood that he can make an application up to 2 years after the end of the tenancy.

The Tenants said in closing that the unit was left in better condition than when they moved in, they had approval for the dog business, they maintained business insurance and they did not pay the \$400.00 rent for the pasture and the Quonset because the Landlord did not allow them to use these facilities for the months of part of May and June, 2013. As well the Tenants said they had an agreement with a neighbor to remove the manure, but the neighbor could not get access to the field to remove the manure. As a result they did not remove the manure on the property.

The Landlord said he did not restrict the use of the Quonset or the pasture from the Tenants use of these items. As well he did not authorize a dog kennel to be operated out of the rental unit and the dogs and dog kennel operations are responsible for most of the damage to the rental unit.

Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord's claim against the Tenants' security deposit for damage is extinguished. As a result, I dismiss the Landlord's request to retain the Tenants' security deposit.

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit. In this situation the Landlord has established there is damage to the rental unit, but the Landlord has not established the Tenants caused the damage except for the manure removal as both parties agreed the manure was there and the Landlord paid to have it removed. In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

Although the Landlord has established there is damage to the rental unit the Landlord has not established that the unit was in poorer condition on move out than it was on move in. As well the Landlord has not provided any verification of the amounts to rectify the loss or damage except for the manure removal in the amount of \$73.50. Therefore

the Landlord has not established grounds to prove his claims. Consequently I dismiss the Landlord's damage claims, except for the manure removal in the amount of \$73.50, based on lack of evidence to establish a loss or damage existed at the end of the tenancy and that the Landlord did not provide any evidence to verify the amount of that loss or damage. I award the Landlord a total damage claim of \$73.50 with leave to reapply for damages that have been completed and paid for in the future.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant did not have the right under the Act to withhold part or all of the rent for June, 2013, therefore I find in favour of the Landlord for the unpaid rent of \$400.00 for June, 2013.

With respect to the Tenants' application for double their security deposit in the amount of \$2,000.00.

Section 38 (1) of the Act says that 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.

And Section 38 (6) says 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.

I find from the Tenants' testimony and written evidence that they did give the Landlord a forwarding address in writing on August 8, 2013. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution by August 23, 2013. Consequently I find for the Tenants and I award a claim for double the security deposit of \$1,000.00 in the amount of \$2,000.00.

As the Tenants have been successful in this matter I order the Tenants to recover the \$50.00 filing fee for this proceeding from the Landlord. As the Landlord has not been successful in this matter I order the Landlord to bear the \$50.00 filing fee for his application, which he has already paid.

A monetary order has been issues to the Tenants for the following:

	Double Security deposit	\$ 2,000.00	
	Filing fee	\$ 50.00	
	Subtotal		\$ 2,050.00
Less	Unpaid rent for June, 2013	\$ 400.00	
	Manure removal costs	\$ 73.50	
	Subtotal		\$ 473.50
	Balance owing		\$1,576.50

Conclusion

A monetary order has been issued to the Tenants' for \$1,576.50.

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: December 09, 2013

Residential Tenancy Branch

