



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNSD, FF
MNDC, MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property / retention of the security and pet damage deposits / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of 2 security deposits and 1 pet damage deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on August 01, 2012. Monthly rent of \$800.00 was due and payable in advance on the first day of each month. The landlord testified that a security deposit of \$400.00 and a pet damage deposit of \$400.00 were collected. Male tenant "RK" testified that a security deposit of \$400.00 was collected for him, in addition to a \$400.00 security deposit for female tenant (his sister) "BF," as well as a \$400.00 pet damage deposit. A move-in condition inspection report was not completed.

The tenants vacated the unit effective September 30, 2013, however, the landlord testified that proper 30 day notice to end tenancy was not provided. On the other hand, the tenant testified that the landlord was orally informed on numerous occasions that tenancy would end effective September 30, 2013, and that a text message sent to the landlord on August 6, 2013 served to formally confirm the tenants' intentions in that regard. A move-out condition inspection report was not completed, and the landlord testified that new renters took possession of the unit effective October 3, 2013.

Analysis

Section 19 of the Act addresses **Limits on amount of deposits**, in part as follows:

19(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.

Section 45 of the Act speaks to **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic 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, and
- (b) 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.

Section 52 of the Act addresses **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The attention of the parties is also drawn to the following statutory provisions:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Based on the documentary evidence and testimony, and in consideration of the above statutory provisions, the aspects of the respective applications and my findings follow.

LANDLORD

\$800.00: *loss of rental income and repairs to damage, comprised as follows:*

- \$400.00 - security deposit
- \$400.00 - pet damage deposit

I find that there is insufficient evidence to support the tenants' claim that proper notice was given to end tenancy, pursuant to the requirements set out above under sections 45 and 52 of the Act. However, the landlord has not claimed that as a result of insufficient notice he suffered a loss of rental income equal to 1 month's rent. Rather, he claims that loss of rental income was limited to 2 days: October 1 + 2, 2013. Accordingly, I find on a balance of probabilities that the landlord has established entitlement limited to **\$51.62**, which is calculated as follows:

$\$800.00 \text{ (monthly rent)} \div 31 \text{ (number of days in October)} = \$25.81 \text{ (daily rent)}$

$\$25.81 \text{ (daily rent)} \times 2 \text{ (number of days of lost rental income)} = \51.62

The landlord's further justification for retaining the full security and pet damage deposits concerns what he claims were certain damages and unauthorized restructuring within the unit. However, in the absence of any comparative results from move-in and move-out condition inspection reports, or photographs or receipts, I find that the landlord has failed to meet the burden of proving any entitlement further to \$51.62, as above.

Entitlement: \$51.62

TENANTS

\$1,400.00: *comprised as follows:*

- \$400.00 - security deposit # 1
- \$400.00 - security deposit # 2
- \$400.00 - pet damage deposit
- \$200.00 - materials for constructing a fence at the unit

There is no conclusive documentary evidence in support of the claim that 2 separate security deposits, each in the amount of \$400.00, were collected, even while there is no

dispute that \$400.00 was collected for a pet damage deposit. Accordingly, where it concerns the security deposit, I find on a balance of probabilities that the amount collected was limited to \$400.00, or “the equivalent of ½ of one month’s rent payable under the tenancy agreement.” In the result, as to the deposits, I find that the tenants have established entitlement to repayment of a total of **\$800.00** (\$400.00 + \$400.00).

The tenants claim that the landlord approved of the construction of a fence, and that they were unable to recover it at the end of tenancy as it had been damaged by the landlord. There is no documentary evidence concerning any understandings or agreements reached between the parties around the construction of a fence, nor any receipts in support of the cost of fencing materials, nor any description of the condition of the fence pursuant to move-in or move-out condition inspection reports, nor photographs of the fence. In the result, this aspect of the application is dismissed.

Entitlement: \$800.00

As both parties have achieved a measure of success with their applications, the applications to recover the \$50.00 filing fee are both hereby dismissed.

Offsetting the respective entitlements, I find that the tenants have established a net claim of **\$748.38** (\$800.00 - \$51.62). I order that the landlord retain **\$51.62** from the combined security and pet damage deposits of **\$800.00**, and I order that the landlord repay the balance of **\$748.38** to the tenants.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$748.38**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced 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: January 15, 2014

Residential Tenancy Branch

