



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a Monetary Order for: damage to the unit; unpaid rent or utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the “Act”), regulation or tenancy agreement; to keep part of the tenants’ security deposit and to recover the filing fee for the cost of the application.

An agent for the landlord appeared for the hearing and provided affirmed testimony during the hearing and also submitted documentary evidence prior to the hearing which was served to the tenants in accordance with the Residential Tenancy Branch Rules of Procedure.

The landlord’s agent testified that the tenants had been served with a copy of the application, a copy of the evidence and the Notice of Hearing documents on November 8, 2013 by registered mail pursuant to section 89(1) (c) of the Act. The landlord provided the Canada Post tracking numbers as evidence for this method of service. Section 90(a) of the Act states that a document served by mail is deemed to have been received five days after it is mailed. However, the landlord testified that she had learnt on December 3, 2013 that the tenant had not provided her with a complete forwarding address. After receiving the complete address from the tenants, the landlord amended the application to include the tenants’ suite number on their forwarding address and registered mailed another copy of the above documents again to the tenants.

Based on this, I find that the landlord served the tenants with the Notice of Hearing documents and evidence used in this hearing in accordance with the Act.

However, the tenants failed to appear for the hearing and did not provide any evidence prior to the hearing, despite being served notice of this hearing in accordance with the Act. As a result, the hearing continued in the absence of the tenant and the undisputed evidence of the landlord has been carefully considered in this decision.

Issue(s) to be Decided

- Did the landlord deal with the tenants' security deposit in accordance with the Act?
- Have the tenants extinguished their right to the return of the security deposit?

Background and Evidence

The landlord's agent testified that this month to month tenancy started on March 6, 2012. The tenants paid a security deposit of \$412.50 which was transferred to this tenancy on January 4, 2012 from a previous tenancy. Rent for the suite was payable by the tenants to the landlord in the amount of \$825.00 on the first day of each month.

The landlord's agent testified that the move in condition inspection report was completed on March 6, 2012 and provided a copy of the report as evidence.

The landlord's agent testified that the tenants had provided written notice on September 28, 2013 to end the periodic tenancy on October 31, 2013. As a result, the landlord's agent served the tenants on October 16, 2013 with a document titled "Notice to Tenants When Vacating". The notice explains the items that were required to be cleaned, including the shampooing and vacuuming of the carpets. The notice goes on to clearly state that the move out condition inspection has been scheduled for October 31, at 1:00 pm. The notice also explains to the tenants that the move out condition inspection is mandatory and failure to attend may result in the tenants extinguishing their right to the return of their security deposit.

The landlord's agent testified that she did not hear anything back from the tenants and she was concerned that they would not attend and this would cause her problems because she had new renters moving in on November 1, 2013. As a result, the landlord's agent then served the tenants with a "Notice of Final Opportunity to Schedule a Condition Inspection" using Residential Tenancy Branch form number 22, which again detailed the date of the move out inspection and explains the consequences for the tenants if they fail to attend.

The landlord's agent testified that the tenants failed to appear for the move out condition inspection on October 31, 2013 at 1:00 pm and no notice was provided to her prior to this date by the tenants of their inability to attend or suggestion of another date. The landlord's agent testified that she had the rental suite cleaned including the carpets, which had been left dirty, and the new renters moved in on November 1, 2013.

The landlord's agent testified that one of the tenants came to visit her on November 3, 2013 during which time the landlord explained the deductions she wanted to make from the tenants' security deposit; this included deductions for carpet cleaning, drape cleaning, garbage removal, general cleaning and unpaid utility bills. The tenant consented in writing to all of the deductions that the landlord's agent wanted to make for a total amount of \$238.15; however, the tenant refused to consent to the charges for the carpet cleaning in the amount of \$84.00. This was recorded in writing and provided as evidence for the hearing. The tenant also provided the landlord with his forwarding address at this time.

As a result, the landlord made an application for dispute resolution on November 7, 2013 for the cleaning costs already consented to by the tenant in the amount of \$238.15, the carpet cleaning for \$84.00, and the filing fee in the amount of \$50.00, for a total claim of \$372.15.

The landlord's agent testified that she deducted the amount being claimed, \$372.15, from the tenants' security deposit and returned to the tenants \$40.35. The landlord now seeks permission to keep the remainder of the tenants' security deposit for the above costs which the landlord currently holds.

Analysis

I accept the evidence of the landlord's agent that the tenants provided her with their forwarding address on November 3, 2013. As a result, I find that the landlord made an application to keep the tenants' security deposit within the allowable time limits stipulated by the Act.

Section 36(1) of the Act states that the right of a tenant to the return of the security deposit is extinguished if the landlord provided an opportunity for the tenant to attend the condition inspection and the tenant had not participated. Part 3 of the Residential Tenancy Regulation provides further instructions on how condition inspections are to be arranged and conducted.

In relation to the Act, I find that the landlord provided the tenants an opportunity to attend the move out inspection on October 31, 2013 at 1:00 pm by giving them a written notice on October 16, 2013 detailing this date and time prior to the tenancy ending. The tenants failed to notify the landlord that they would be unable to attend or suggest an alternative date and time which could have been accommodated or considered by the landlord for a second opportunity for the tenants to participate.

I find that the landlord took the further steps to ensure the tenants were aware of the move out condition inspection date and time again on October 25, 2013, using the prescribed form as required by the Regulation. Again, there was no response from the tenants.

The tenants met with the landlord 3 days later to discuss the damages and costs with the tenancy and I find that it would not have been possible to complete the move out inspection as the rental suite had been cleaned and was being occupied by new renters at this time.

As a result, I find that the tenants extinguished their right to the return of their security deposit pursuant to section 36(1) of the Act, and therefore there is no requirement for the landlord to return any of the remaining money that the landlord holds from the tenants' security deposit.

Conclusion

As the landlord's claim and the monies the landlord already holds include all of the damage, utility bills and losses incurred by the landlord during the tenancy, including the filing fee of \$50.00, I order the landlord to retain the remaining amount held of \$372.15 in full satisfaction of the landlord's claim for the above reasons.

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: February 20, 2014

Residential Tenancy Branch

