



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with a tenant's Application for a Monetary Order for return of the security deposit and compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Are the tenants entitled to return of the security deposit, and if so, should it be doubled?
2. Have the tenants established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced November 1, 2012 and ended April 30, 2013. The tenants paid a \$500.00 security deposit and were required to pay rent of \$1,000.00 on the 1st day of every month. The landlord did not prepare condition inspection reports.

The tenants are seeking return of their security deposit and the tenants expressly stated that they did not waive any entitlement to doubling of the deposit if applicable. The tenants submitted that they provided the landlord with their forwarding address in writing by way of a letter left on the counter in the rental unit along with the keys. The tenants received from the landlord invoices totalling over \$500.00. The tenants did not authorize the landlord to keep any part of the security deposit. The tenants proceeded to file their Application. The landlord did not file an Application for Dispute Resolution seeking authorization to retain the security deposit.

The landlord acknowledged receipt of the tenant's forwarding address. The landlord could not recall exactly which receipts she sent to the tenants after their tenancy ended but she acknowledged that she sent them some receipts. The landlord was of the position the landlord spent more than \$500.00 cleaning the rental unit and repairing the driveway so she did not return the security deposit.

In addition to return of the security deposit, the tenants requested compensation of \$1,200.00 for moving costs; \$1,800.00 for storage costs; and, \$325.00 for hydro costs. The tenants did not provide any documentation such as receipts, invoices or statements of account to verify the amounts claimed and I dismissed this portion of their claim summarily.

The tenants were also seeking "punitive damages for emotional stress and anxiety" in the amount of \$1,000.00. I dismissed this portion of the tenant's claim without hearing more from the tenants as awards for damage or loss are intended to be restorative and not punitive.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

With respect to the tenant's claims for moving costs, storage costs and hydro costs, I found that the tenants' failure to provide verification of the amounts claimed sufficient reason to dismiss the tenants' claims for such without making any other findings as to whether the tenants established the other criteria outlined above.

As explained to the tenants during the hearing, the Act does not provide for punitive awards to a tenant, only awards to compensate the tenant for their loss associated to a landlord's breach of the Act, regulations or tenancy agreement. Therefore, I dismissed the tenants' claim for punitive damages against the landlord as the Act does not provide for such awards.

As the landlord was informed during the hearing, the landlord's assertions that she incurred costs for cleaning or damage were not issues for me to decide as the landlord had not made an Application for Dispute Resolution. The purpose of this hearing was to hear the tenants' Application for Dispute Resolution and determine whether the landlord complied with the Act with respect to handling of the security deposit. The landlord remains at liberty to make a separate application for damages or loss associated with breach of the Act, regulations or tenancy agreement by the tenants.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damage if the landlord has met the inspection report requirements. In this case, the landlord did not meet the inspection report requirements and the landlord could not have legally obtained the tenant's consent to made deductions for damage. Nor, did the landlord have the tenants' consent to make any other deductions from the security deposit. Accordingly, the landlord was required to comply with section 38(1) of the Act by either returning the security deposit to the tenants or making an Application for Dispute Resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

I find that the tenancy ended and the tenants provided their forwarding address to the landlord in writing but the landlord did not repay the security deposit or make an Application for Dispute Resolution claiming against the security deposit within 15 days. Therefore, the landlord did not have the legal right to retain the security deposit and the landlord must now pay the tenants double the security deposit.

I provide the tenants with a Monetary Order in the amount of \$1,000.00 to serve upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenants have been provided a Monetary Order in the amount of \$1,000.00 for return of double the security deposit. The remainder of the tenants' claims have been dismissed.

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: April 22, 2014

Residential Tenancy Branch

