



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking a monetary order for compensation for damage to the unit, site or property, for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit, to recover the filing fee for this proceeding and for other considerations.

The Tenant 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 Landlords to the Tenant were done by registered mail on May 5, 2014, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by registered mail on January 29, 2014, in accordance with section 89 of the Act.

The Landlords and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Are there losses or damages to the Landlords and if so how much?
4. Are the Landlords entitled to retain the Tenant's deposits?
5. What other considerations are there?

Tenant:

1. Is the Tenant entitled to recover double the security deposit?

Background and Evidence

This tenancy started on July 1, 2010 as a fixed term with an expiry date of July 31, 2013 and then continued on a month to month basis. Rent was \$2,700.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,500.00 on June 10, 2010.

The Tenant said she gave the Landlord notice to end the tenancy in October for November 15, 2013. The Tenant said the Landlord accepted the Tenants' request to end the tenancy and the tenancy ended on November 15, 2013. The Tenant continued to say that no move in or move out condition inspections were done and the Tenant's representative E.L. gave the Landlord the Tenant's forwarding address in writing on an envelope on December 7, 2013 when E.L. met with the Landlord at the rental unit. The Tenant provided witness testimony that supported her statement that the Landlord received her forwarding address in writing on December 7, 2013. Witness E.L. said she gave the Landlord the Tenant's forwarding address in writing on an envelope on December 7, 2013. Witness E.B. said that he witnessed E.L. give the Landlord the Tenant's written forwarding address on December 7, 2013. The Landlord said he did not receive the Tenant's forwarding address in writing and both Witnesses and the Tenant are lying.

The Tenant continued to say she hired a professional carpet cleaning company, a professional cleaning company and repair persons to repair damage and paint parts of the rental unit. The Tenant said she spent \$1,500.00 for cleaning and repairing the rental unit prior to ending the tenancy. The Tenant said she submitted the receipt and a video of the rental unit at the end of the tenancy To the RTB on May 11, 2014 which was too late for the evidence to be included in the hearing. Evidence must be submitted 5 working days prior to the hearing date.

The Tenant said she asked the Landlord for her security deposit and the Landlord said they were not going to return the security deposit as the Landlord was not happy with the condition of the rental unit. The Tenant continued to say she has not received her security deposit back and as a result she was told by the Residential Tenancy Branch, that she could apply for double the security deposit. The Tenant said she is requesting 2 X \$1,500.00 or \$3,000.00 as well as the filing fee for this proceeding of \$50.00.

The Landlords said they retained the Tenant's security deposit because there was damage to the rental unit and the unit was not clean. The Landlord agreed that they did not complete a move in and a move out condition inspection reports as they only have the one rental and they did not know they had to do these reports.

The Landlord continued to say that the Tenant damaged the siding on the house by putting the bar-b-que to close to the house and when the Tenant fixed it they used the wrong siding. As well the Landlord said the carpets were dirty and there were holes cut into the carpet, the walls had holes in them and the repairs the Tenant did were poor and the wrong paint was used to paint over the repairs. The Landlord said they had to paint the rental unit because the walls were in poor condition. The Landlord continued to say that the stove was covered in grease and they had to take it apart and clean each piece. The Landlords said there are damaged doors and broken door knobs throughout the house. As well the Landlord said there were cigarette butts throughout the yard which they had to pick up and clean the yard which had debris in it.

The Landlord said they tried a number of times to meet with the Tenant but the Tenant was not able to do a proper walk through with the Landlord so they met with the Tenant's representative E.L. and E.B. on December 7, 2013 to end the tenancy. The Landlord said the Tenant's representatives gave him back the keys to the unit but many of the keys did not work. The Landlord said he wants his keys back. The Tenant said her representative gave the Landlord all the keys she had for the rental unit.

The Landlord said that because of all the damage the Landlord is requesting to retain the Tenant's security deposit of \$1,500.00 and they are claiming \$5,769.23 in damages. The Landlord submitted a monetary order worksheet with a listing of their claims and amounts but the Landlord did not provide any evidence that the work has been completed or receipts to verify the costs of the repairs and clean up.

The Landlord did submit 13 photographs of the alleged damage to the rental unit but there is no date on the photographs and there is no proof as to the location of the photographs.

The Landlord said in closing that this was a good tenancy and they are disappointed that it is ending badly, but the Tenant did not leave the unit as it was at the start of the tenancy therefore the Landlords are seeking compensation. As well the Landlords said they are not experienced as landlords so they may not have completed all the correct forms but there is damage to the unit that the Tenant is responsible for.

The Tenant said she thought this was a good tenancy as well and she is sad it is end this way, but the Tenant said the rental unit was in good condition when she left as she repaired and cleaned everything in the rental unit. The Tenant said the Landlord has not returned her security deposit so she is applying for double the security deposit in the amount of \$3,000.00 as indicated in the Act.

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 Tenant's security deposit for damage is extinguished. As a result, I dismiss the Landlord's request to retain the Tenant's 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 was damage to the rental unit from the photographs submitted but the Landlord has not proven the Tenant caused the damage and the Tenant says she repaired the damage that was caused during the tenancy. 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 Landlords have established there was damage to the unit but the Landlord has not proven that the unit was in poorer condition on move out than it was on move in, because there is no information on the condition of the unit on move in. As well the Landlord has not provided any verification of the amounts to rectify the loss or damage that they have applied for; therefore the Landlord has not established grounds to prove their claim. Consequently I dismiss the Landlords' claim for damage or loss based on lack of evidence to establish a loss or damage existed at the end of the tenancy and that the Landlords did not provide any evidence to verify the amount of that loss or

damage. I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply due to a lack of evidence.

With respect to the Tenants' application for double their security deposit in the amount of \$3,000.00.

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 Tenant's testimony, the witness testimony and written evidence that the Tenant's representative gave the Landlord a forwarding address in writing for the Tenant on December 7, 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 December 22, 2013. Consequently I find for the Tenant and grant an order for double the security deposit of \$1,500.00 in the amount of \$3,000.00.

As the Tenants have been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding from the Landlords. As the Landlords have not been successful in this matter I order the Landlords to bear the \$100.00 filing fee for their application, which they have already paid.

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

Double Security deposit	\$ 3,000.00	
Filing fee	\$ 50.00	
Total		\$ 3,050.00

Conclusion

A monetary order has been issued to the Tenant for \$3,050.00.

The Landlords' application 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: May 13, 2014

Residential Tenancy Branch

