



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for a monetary order for return of all or part of the pet damage deposit or security deposit.

One of the landlords and both tenants attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The landlord also stated that he represents both named landlords. The parties provided evidentiary material to the Residential Tenancy Branch and to each other in advance of the hearing. The parties were also given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established a monetary claim as against the landlords for return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The parties agree that a tenancy agreement was entered into by the parties to rent the upper level of a house for a fixed term to commence on June 1, 2013 and to expire on May 31, 2015. A copy of the tenancy agreement has been provided. Rent in the amount of \$1,100.00 per month was payable in advance on the 1st day of each month

and there are no rental arrears. The tenants paid the landlords a security deposit in 2 installments of \$250.00 each on May 1, 2013 and June 1, 2013 and copies of receipts have been provided.

The tenant testified that during the first year of the tenancy the tenants moved to the lower level of the same rental home and rented from the same landlords for a lower amount of \$725.00 per month, and the landlords still held the \$500.00 security deposit. The parties had verbally agreed that the new rental was on a month-to-month basis and a new tenancy agreement was not put into writing. The tenants moved out of the rental unit on December 31, 2013 and a move-out condition inspection report was completed wherein the tenants provided a forwarding address in writing. Copies of 2 reports have been provided by the landlords. The first is for the upper unit which shows a move-in inspection date of June 1, 2013 and a move-out inspection date of July 31, 2013. The other report is for the lower unit which shows a move-in inspection date of August 1, 2013 and a move-out inspection date of December 31, 2013. The first report contains a forwarding address of the tenants which is not the lower unit. The tenant testified that they did not receive copies of both reports until they received the landlords' evidence package.

The tenant also testified that the washer and dryer in the rental unit were broken and the landlord charged the tenants \$265.94 for their repair. The landlords sent to the tenants \$127.42 with a letter dated January 14, 2014 stating that there were repairs required and a hydro bill in the amount of \$292.57. A copy of the letter has been provided and it states that the washing machine repairs totalled \$797.83, light bulbs and a broken light switch plate cost the landlords \$12.84, light bulbs for the lower suite cost \$27.17, \$40.00 was paid by the landlords to the new tenant for cleaning, and the hydro bill is \$292.57. Those amounts add up to \$372.58, and deducting that from the security deposit of \$500.00 equals \$127.42. The letter goes on to say that \$265.94 would be 1/3 of the costs for the washing machine problem, and if the landlords were to deduct that amount, the tenants would still owe the landlords \$138.52, but the landlords were willing to, "...forego collecting on this amount."

The landlords sent to the tenants another letter dated March 16, 2014 stating that the hydro was \$292.57 and the tenants owed another \$67.20, and the tenants do not understand the landlords' calculations. The tenant testified that they agreed in writing that the landlords keep a portion of the security deposit to cover hydro, but no amount was specifically agreed to.

The landlord testified that he agreed that the tenants would move into the lower level and the landlord suggested a month-to-month tenancy. The landlord suggested completing a new tenancy agreement, but it was not done.

On December 10, 2013 the tenants gave the landlords notice to end the tenancy effective December 31, 2013. The hydro amount was \$225.37 to the 10th of December, 2013 and the new Smart Meters allow daily calculations which bring the total amount due to the end of December, 2013 is \$292.57. The landlord further testified that the amount is payable to the tenants in the upper level of the house.

The landlord also testified that the landlords did not make an application for dispute resolution claiming any part of the security deposit, but just did so on their own. The amount that the landlord feels the tenants are entitled to is \$80.01, being \$500.00 security deposit, less \$292.57 that the landlords paid to the other tenants for hydro, and less the \$127.42 the landlords returned to the tenants.

Analysis

The *Residential Tenancy Act* requires a landlord to return a security deposit in full or apply for dispute resolution to claim against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so the landlord must be ordered to pay the tenant double the amount unless the tenant has agreed in writing that the landlord may keep all or a portion.

In this case, although the forwarding address of the tenants is written on the first move-out condition inspection report, I find that the tenants provided it to the landlords on December 31, 2013 which is also the date that the tenancy ended. The landlords returned \$127.42 to the tenants along with a letter dated January 14, 2014 and the landlord agrees that the tenants are owed \$80.01 after adjusting the hydro bill.

I have examined the evidence provided by the parties, and there is no evidence that the tenants ever agreed in writing that the landlord could keep \$292.57 of the security deposit. The tenant testified that the tenants agreed but did not know the amount. The landlord has not provided any evidence of what is or isn't owed, nor has the landlord made an application for dispute resolution claiming any amount from the tenants.

In the circumstances, I find that the tenants are entitled to double recover of the security deposit, or \$1,000.00, less the \$127.42 returned by the landlords, for a total of \$872.58.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$872.58.

This order is final and binding and may be enforced.

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 21, 2014

Residential Tenancy Branch

