



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant to recover twice the security deposit pursuant to section 38 and for recovery of the filing fee pursuant to section 72.

SERVICE

Both parties attended and confirmed receipt of each other's application by registered mail. Although the landlord contended that the tenant had mistakenly put the name of his wife on his registered envelope and his on her envelope and the tenant's application should be dismissed for this mistake, I find each landlord did receive the Application by registered mail and they went to the same address. I find this is sufficient service for the purposes of this hearing. I find the documents were served according to section 89 of the Act.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant breached a fixed term lease, failed to participate in move-out inspections, lost a key, left the premises dirty and the costs he incurred to correct the damages? Is the landlord entitled to retain all the security and pet damage deposits and recover the filing fee?

Or are the tenants entitled to the return of their security and pet damage deposits?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on December 1,

2013, rent was \$1485 and a security deposit and pet damage deposit was paid, each of \$742.50 and totalling \$1485. It is undisputed that this was a fixed term lease to expire on November 30, 2014, the tenants broke the lease after giving notice and the tenants paid the rent until it was re-rented on March 1, 2013. The landlord claims a total of \$781.16 as follows:

1. \$250 liquidated damages as provided in the lease.
2. \$341.25 for rekeying (\$125) and cleaning (\$200)
3. \$189.91 for civic utilities

In addition, the landlord claims the tenants' right to the return of the deposits is extinguished pursuant to section 36(1) as he gave the tenants two opportunities for a move-out inspection but they failed to participate on either occasion. The tenants contended that the landlord knew they had moved out of town due to job obligations, he had emailed them in the past and yet he chose to post the notices for inspection on the door. The landlord said the tenants did not provide him with a physical forwarding address until March 25, 2014, he was concerned about following the legislation and supplying a written notice of opportunity of inspection, he heard people in the unit and posted the notices on the door expecting they would come to the attention of the tenants. He said the first notice was removed from the door by someone presumably in the unit. The tenants agreed they had had some friends staying in the unit intermittently and the male tenant had a mattress on the floor so he could use it on his occasional visits to town.

The tenants said they paid rent until the end of February to fulfill obligations under the fixed term lease but they do not think the landlord worked diligently to re-rent as he is obligated to do under the legislation. The landlord said it was a bad time of year and he advertised continually and screened tenants but was not successful until March 1, 2014.

In evidence is the tenants Notice to End Tenancy, the landlord's notification of their obligations under their fixed term lease, the tenancy agreement, a move-in condition inspection report, copies of two opportunities plus a final opportunity to do a move-out inspection and a letter dated March 25 from the tenant containing a forwarding address with a request for return of the security deposit..

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Security and Pet Damage Deposits:

I find the tenants' rights to return of the security and pet damage deposits were extinguished under section 36(1) of the Act as the landlord gave them notice of several opportunities to inspect and got no response. Although the tenant contended that the landlord has the obligation under the Act to consider the timelines of the other party and try to accommodate them for inspections, I find the tenants did not provide a forwarding address in writing to the landlord until March 25, section 88 of the Act does not provide for legal service by email of a Notice of Inspection and the landlord had the obligation to provide the Notices legally. Therefore, I find the tenants' rights to the return of the deposits are extinguished. The Residential Policy Guidelines set out the procedure for dealing with damage and other claims in this situation.

Section 17 of the Residential Policy Guidelines states:

1. *In cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the Act.*

If the amount awarded to the landlord does not exceed the amount of the deposit and interest, the balance may be retained by the landlord as the tenant has forfeited the right to its return.

I find the landlord's claim was \$781.16 including the liquidated damages, cleaning, rekeying and utilities. I find he is also entitled to recover filing fees of \$50. The total amount of possible entitlement then is \$831.16. Since the tenants' rights to the return of the deposits are extinguished, the landlord is entitled to keep any balance remaining of the deposits after deducting the \$831.16. Therefore, I find it moot to pursue arguments on the merits of each charge.

Although the tenant raised some good points in contention of the landlord's claim, they are moot as I find the weight of the evidence is that the landlord has the right to retain any balance of the deposits pursuant to section 36(1).

Conclusion:

I find the landlord is entitled to a monetary order as calculated below.

Costs claimed by landlord	781.16
Filing fee	50.00
Less security and pet damage deposits	-1485.00
Balance to be legally retained by landlord (section 36(1) and Guideline 17)	-653.84

I dismiss the Application of the tenant in its entirety for the reasons set out above and I find them not entitled to recover their filing fee as they were unsuccessful.

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: June 12, 2014

Residential Tenancy Branch

