



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for return of all or part of the pet damage deposit or security deposit.

The landlord and one of the tenants attended the hearing and both gave affirmed testimony. The parties also provided evidentiary material to the Residential Tenancy Branch and to each other. The parties were 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 landlord for return of the security deposit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on July 8, 2011, expired on August 1, 2012 and then reverted to a month-to-month tenancy which ultimately ended on November 15, 2013. Rent in the amount of \$2,000.00 per month was originally payable in advance on the 31st day of each month for the following month, and there are no rental arrears. During the course of the tenancy, the rent was decreased to \$1,850.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,000.00 which is still held in trust by the landlord. A copy of the tenancy agreement has been provided by the landlord.

The tenant also testified that the parties met sometime after the tenancy had ended and the tenant's sister gave to the landlord the tenants' forwarding address in writing, but the tenant does not recall the date.

The tenant also testified that rent for the entire month of November, 2013 was paid to the landlord, and the parties had agreed that half would be returned to the tenants. The landlord has not repaid the amount and the tenants claim half a month's rent back from the landlord. The tenants gave the landlord written notice of their intention to vacate by way of email but the tenant has not provided a copy and does not recall the date.

The landlord testified that he did not receive the tenants' forwarding address in writing until receiving the hearing package for this hearing. The landlord sent a text message to the tenant asking for a forwarding address but testified that the tenants did not respond. Once receiving the tenants' application and the notice of hearing, the landlord decided to wait for the outcome before returning the security deposit, but the landlord did not make an application for dispute resolution claiming against it.

The tenants left damage to the rental unit and the landlord has provided photographs to illustrate his testimony. Further, the tenants collected rent and security deposits from other tenants but didn't give the landlord that money.

The parties have provided copies of numerous emails and text messages exchanged between them, which I have reviewed. The emails have been altered to show certain content with added comments.

Analysis

Firstly, with respect to the tenant's claim that the landlord agreed to return half a month's rent, I find no evidence to support that claim. I have reviewed the emails provided but I am not satisfied that they are reliable because it is clear that they have been altered with someone's added comments throughout. Further, most are undated. The *Act* requires a tenant to give to the landlord notice to end a tenancy the day before rent is payable under the tenancy agreement and the notice must be received by the landlord at least one month before the tenant moves out unless the parties agreed in writing. I cannot make that finding based on the evidence before me, and the tenant's application for recovery of half a months' rent is hereby dismissed.

The landlord testified that there are damages to the rental unit, however I have no application by the landlord for a monetary claim or for an order permitting the landlord to keep the security deposit. Therefore, those matters are not considered.

The *Residential Tenancy Act* requires a landlord to return a security deposit in full or make an application for dispute resolution claiming 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, the landlord must repay the tenant double the amount.

In this case, I have no evidence before me of when the landlord received the tenants' forwarding address in writing, but I am satisfied that the landlord has not returned the security deposit and has not made an application for dispute resolution. The landlord received the tenants' forwarding address in writing when he was served with the Tenant's Application for Dispute Resolution.

In the circumstances, I find that the landlord is indebted to the tenants for the full amount of the security deposit, being \$1,000.00. During the course of the hearing, the landlord was ordered to repay to the tenants that amount within 15 days of today's date, and that if the landlord fails to do so, the tenants will be at liberty to make another application for dispute resolution for double the amount.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,000.00.

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: June 26, 2014

Residential Tenancy Branch

