



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF
 MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords. The tenants' application specifies a claim for double the amount of the security deposit.

All named parties attended the conference call hearing, however only one of the landlords and one of the tenants testified. The parties also provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. 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 evidence or the hearing packages were raised.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?

- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlords be permitted to keep the security deposit in partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?

Background and Evidence

The landlord testified that this fixed term tenancy began on June 1, 2013 and expired after one year and then was to revert to a month-to-month tenancy. The tenants vacated the rental unit on or about May 28, 2014. Rent in the amount of \$1,050.00 per month was payable in advance on the 1st day of each month. On March 29, 2013 the landlords collected a security deposit from the tenants in the amount of \$525.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite in the landlords' home, and the landlords reside in the upper level.

The landlord further testified that the tenants vacated the rental unit without giving the landlords proper notice. One of the landlords received a text message on April 6, 2014 from one of the tenants stating that the tenants had bought a house. On May 27, 2014 the landlord attempted to confirm the expected date of vacancy, but the tenant replied by way of text message stating that they would be out by May 28, 2014. A typewritten transcript of a series of text messages exchanged between the parties has been provided dated April 6 through May 31, 2014.

The landlords placed advertisements on Craigslist and Kijiji, on-line websites, sometime in April, 2014 but the landlord does not recall the date, and copies of the advertisements are not available once they expire, so the landlords have not been able to obtain them as evidence for this hearing. The rental unit was re-rented for June 15, 2014. The landlords claim \$525.00 for half a month's rent.

The landlord further testified that the landlords had completed a move-in condition inspection report before the tenants moved in, but without the tenants present, and the landlords had the paperwork ready but simply forgot to go over it with the tenants. A move-out condition inspection report was completed by the parties on June 4, 2014, a copy of which has been provided. The form has the move-in as well as the move-out portions completed, and the tenants' forwarding address has also been completed. The

landlord testified that the inspection couldn't be completed prior to June 4, 2014 because the carpets in the rental unit were still wet from being cleaned.

The landlord's spouse saw the rental unit before the tenants moved out, and told the tenants it looked okay except for carpet stain. The wooden play structure and 2 doors were damaged as well. The tenants provided the landlord with weather stripping for one of the doors, and the landlords claim \$25.00 for its installation and labour costs. The landlord further testified that the play structure and carpets were less than one year old at the beginning of the tenancy. The landlords advised the tenants by email that the tenants' attempt to repair the play structure was not sufficient, and the landlords claim \$75.00 for sanding and staining. The landlord stated that a contractor had advised that \$50.00 per hour would be the rate a contractor would charge.

The landlords have also provided photographs of the rental unit which show stains on carpeting and scratches on the walls of the wooden play structure.

Also provided is an invoice for damage and restoration to reduce bleach spots on the carpets in the amount of \$353.10. A letter from a realtor dated July 21, 2014 has also been provided, which states that the writer helped the landlords purchase the home in December, 2012, and carpet in the basement suite was in "as new" condition. Also provided is an email dated July 23, 2014 by a person stating that he reinstalled the carpet in May, 2013 while the rental unit was vacant, and the carpets in the suite appeared to be brand new, as well as another note stating that the writer assisted with renovations from February, 2013 to May, 2013 during which time the rental unit was vacant. In another note the writer states that the suite was not rented between January 2013 and May 2013; being first rented in June, 2013. The final note provided states that the writer signed a lease with the landlords to rent the rental unit starting 15 June 2014.

The tenant testified that on April 16, 2014 the tenants left a notice to end the tenancy in the landlords' mailbox; the landlords were not at home when the tenants arrived. A copy of the notice has been provided, and it states that the tenants will be ending the tenancy on May 31, 2014 and is signed by one of the tenants and dated April 16, 2014. The tenant also testified that the parties had multiple discussions about the end of the tenancy verbally, by text messaging and by email. The tenant stated that placing the notice to end tenancy in the landlords' mailbox is deemed under the *Residential Tenancy Act* to be served 3 days later.

A type-written transcript of text messages has also been provided by the tenants, which run from May 27 to June 1, 2014. The first message, dated May 27, 2014 is from the landlord to the tenant asking when the tenants would be moving, and a response the same day that states the tenants are moving out on the 29th.

During cross examination, the landlord questioned whether or not the mailbox that the notice to end tenancy was placed in contained miscellaneous objects, or if it was in use. The tenant did not notice any objects in the mailbox.

The landlord texted the tenant on May 27 asking if the repairs to the weather stripping, door jams and stain for the play structure could be taken out of the security deposit. The tenant didn't agree without a specific cost. The parties did not come to an agreement, but agreed to wait until the move-out condition inspection which was to take place on May 30, 2014. On May 29, 2014 the landlord advised the tenant that he had seen the rental unit and it looked fine other than cleaning the carpets. On May 31, 2014 the tenant provided a forwarding address by text message to the landlord and stated that the landlords had told the tenant that "there isn't any point in doing a written move out inspection since we didn't do a move in inspection."

The tenant further testified that the landlords have not returned any portion of the security deposit, and the tenants claim double the amount, or \$1,050.00.

Analysis

Where a party makes a monetary claim against another, the onus is on the claiming party to prove the claim. Dealing firstly with the landlords' application for a monetary order for unpaid rent, the landlords claim that the tenants did not give the notice required under the *Act* to vacate the rental unit, and the tenants claim that the notice was placed in the landlords' mailbox on April 16, 2014 ending the tenancy effective May 31, 2014, and provided a copy of the note. The tenant properly pointed out that documents served in that manner are deemed to be served 3 days later, and I so find. Further, the parties agree that discussions about the end of the tenancy took place by way of verbal conversations, text messages and emails. The landlord testified that the date of vacancy was not confirmed until the very end of the tenancy, but also testified that advertisements were placed in on-line websites commencing in April, 2014 to re-rent the rental unit. I have reviewed the text messaging transcript provided by the landlords and note that the first is from the tenant stating that the tenants had purchased a home and would take possession on May 29. In the circumstances, I am not satisfied that the landlords have established that the tenants failed to provide the

notice required under the *Act*, and the landlords' application for a monetary order for unpaid rent is hereby dismissed.

With respect to the tenants' claim for double recovery of the security deposit, the *Act* specifically states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at move-in and move-out. It also states that the landlord and tenant must both, together, complete the reports, and places the onus on the landlord to ensure the reports are completed in accordance with the regulations. The tenants take the position that the landlords' right to claim against the security deposit for damages is extinguished because the landlords failed to ensure the move-in condition inspection report was completed in accordance with the *Act* and the regulations. I agree. However, the landlords' application to make a claim for damages is not extinguished, and the landlords' right to make a claim against the security deposit for unpaid rent is not extinguished. The parties agree that the tenants moved out of the rental unit on May 28, 2014 having paid rent to the end of May. Therefore, I find that the tenancy ended on May 31, 2014, and the landlords filed the application for dispute resolution on June 13, 2014, and therefore, the tenants are not entitled to double recovery of the security deposit.

With respect to the landlords' application for damage to the unit, site or property, in order to be successful in such a claim, the onus is on the landlords to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlords made to mitigate the damage or loss.

I have reviewed the material, and I find that the tenants did not agree with the condition inspection report, and the tenants take the position that the landlords waited too long between the dates of the tenants' move-out and the move-out condition inspection. The landlord testified that the carpets were wet, so the inspection had to wait, and no one moved into the rental unit until June 15, 2014. In the absence of an agreement by the tenants, I find that the condition inspection reports are not reliable as evidence of the condition of the rental unit.

I am satisfied, however, that the tenants caused damage to the carpets and I am satisfied that they were relatively new at the commencement of the tenancy. A tenant is required to repair any damage caused by the actions or neglect of the tenant during a tenancy, and must leave a rental unit at the end of a tenancy reasonably clean and

undamaged except for normal wear and tear. I find that the damage to the carpets is beyond normal wear and tear, and the landlords have established elements 1 and 2 in the test for damages.

With respect to element 3, the landlords claim \$353.10 for the carpet repair and have provided an invoice for that amount, and I am satisfied that the amount has been proven.

With respect to the landlords' claim for installation of the weather stripping and repairs to the play structure, I am not satisfied that the landlords have established that any damage was beyond normal wear and tear. The tenants have provided the landlords with some weather stripping, and I find that the balance of the claim for those items has not been proven.

In summary, I find that the landlords have failed to establish a monetary claim for unpaid rent or utilities, and that the tenants have failed to establish a monetary claim for double the amount of the security deposit. I find that the landlords have established a monetary claim for \$353.10 for the carpet damage. Since both parties have filed for dispute resolution, I decline to order that either party recover the filing fee. I order the landlords to keep \$353.10 of the security deposit, and I grant a monetary order in favour of the tenants for the difference in the amount of \$171.90.

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 \$171.90.

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: August 15, 2014

Residential Tenancy Branch

