



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNDC MNSD FF
For the landlord: MNR MNSD MNDC FF O

Introduction

This hearing was convened as a result of the cross applications of the parties under the *Residential Tenancy Act* (the “Act”).

The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of their security deposit under the *Act*, and to recover the cost of the filing fee.

The landlord applied for a monetary order for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to keep all of part of the tenants’ security deposit, to recover the filing fee, and “other” which indicates “liquidated damages” in the amount of \$500.00.

The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. The tenants and the landlord attended the first portion of the hearing on May 9, 2014, which was adjourned due to issues related to the service of evidence and to provide the opportunity for both parties to receive and review the documentary evidence from the other party. On July 8, 2014, the hearing reconvened and both parties attended and confirmed that they received documentary evidence from the other party, and that they had the opportunity to review that documentary evidence prior to the hearing being reconvened. I find the parties were sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matters

During the hearing, the tenants were advised that their application for monetary compensation was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act (Act)*, because the tenants' application for dispute resolution did not provide sufficient particulars of their claim for monetary compensation, as is required by section 59(2)(b) of the *Act*. I find that proceeding with the tenants' monetary claim at this hearing would be prejudicial to the landlord, as the absence of full particulars including a monetary breakdown of the amount being claimed, makes it difficult, if not impossible, for the landlord to adequately prepare a response to a claim against them. As a result, the tenants' application is **dismissed with leave to reapply**. As a result of the above, only the landlord's application was considered during this proceeding. The tenants were advised, however, that due to the landlord applying to retain the tenants' security deposit, I would consider whether the landlord complied with section 38 in my decision in determining what should happen to the tenants' security deposit and whether the security deposit should double under the *Act*.

In addition to the above, the new service address for the tenants was provided during the hearing and has been included on the cover page of this Decision.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on July 1, 2013, and was scheduled to revert to a periodic, month to month tenancy after June 30, 2014. The tenants paid a security deposit of \$475.00, which the landlord continues to hold. Monthly rent of \$950.00 per month was due on the first day of each month. The parties agreed that the rental unit keys were returned to the landlord on January 28, 2014. The parties disputed whether the tenancy was "frustrated" due to a flood in the rental unit. The tenants considered that the tenancy agreement became "frustrated" after a flood in the rental unit. The landlord does not agree with the tenants that the tenancy agreement became "frustrated".

The landlord has claimed \$3,950.00 as follows:

Item Description	Amount
Item 1. Unpaid rent for three months (February, March and April of 2014 calculated at \$950.00 per month X 3 months)	\$2,850.00
Item 2. Liquidated damages	\$500.00
Item 3. Hydro charges for three months (February, March and April calculated at \$200.00 per month X 3 months)	\$600.00
TOTAL	\$3,950.00

Evidence from the parties relating to “Frustration” of Tenancy

The total hearing time was approximately 128 minutes between the start of the original hearing and the end of the reconvened hearing on July 8, 2014. I will first determine if the tenancy agreement was “frustrated” under the *Act* due to the flood in the rental unit before detailing the evidence presented regarding the remainder of the landlord’s monetary claim.

The parties agreed that on January 6, 2014, the landlord’s dishwasher began to leak and flooded the rental unit below resulting in damage to the rental unit ceiling, walls, flooring, and insulation.

The tenants testified that their last day at the rental unit was on January 12, 2014. The parties agreed that the landlord refunded the tenants \$582.35 for January 2014 rent as the tenants could not continue to reside in the rental unit due to the flood. The landlord stated that the repairs to the rental unit were completed on February 13, 2014.

The parties agreed that the ceiling of the rental unit was being removed as of January 11, 2014. The tenants stated that they stayed at a friend’s place for one week and requested a mutual end to the tenancy as of January 18, 2014, which the landlord stated she did not agree to. The landlord’s position was that the repairs would take three to four weeks and that she “gave permission to the tenants to stay elsewhere” but does not agree that the tenancy was “frustrated”. The rental unit was repaired about five weeks after the date of the flood as the flood occurred on January 6, 2014 and the repairs to the rental unit were completed on February 13, 2014.

Analysis of “Frustration” of Tenancy Argument by Tenants

Residential Tenancy Branch Policy Guideline #34 deals with Frustration and reads in part that:

“...A contract is frustrated where, **without the fault of either party**, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, **the parties to the contract are discharged or relieved from fulfilling their obligations under the contract...**”

[my emphasis added]

The test for determining Frustration of a contract is a high one and requires that the change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Also, a party cannot argue that a contract has been “frustrated” if the frustration is the result of their own deliberate or negligent act or omission.

Based on the above, I find the following. On July 1, 2013, the parties entered into a fixed term tenancy agreement for the tenants to have exclusive use and possession of the rental unit for a fixed term until June 30, 2014 and reverting to a month to month tenancy after June 30, 2014. I find that on January 6, 2014, through no fault of either party, a dishwasher leak in the landlord’s home located directly above the rental unit, resulted in water flooding into the rental unit directly below causing significant damage to the rental unit, damage including but not limited to the rental unit ceiling, walls, insulation and flooring. As a result of the flooding, the tenants were unable to enjoy exclusive use and possession of the rental unit and were displaced due to the repairs required in the rental unit due to the above-noted flooding. In other words, I find that the tenants’ enjoyment of the rental unit that they were contractually entitled to enjoy exclusive use and possession of ended on January 6, 2014, through no fault of either party due to flooding of water in the rental unit from the landlord’s residence located directly above. Therefore, **I find** the fixed term tenancy agreement became **frustrated** as of January 6, 2014 and that the tenancy ended on that date as a result pursuant to section 44(1)(e) of the Act.

Based on the above, I do not find it necessary to include the evidence related to the remainder of the landlord’s claim as the tenancy ended due to frustration on January 6, 2014.

Therefore, **I dismiss** the landlord's claim entirely, without leave to reapply, as the tenancy ended on January 6, 2014 through frustration of the fixed term tenancy agreement. As a result, the landlord is not entitled to compensation for unpaid rent and hydro charges for February, March and April 2014, and liquidated damages as claimed as the tenancy ended on January 6, 2014.

I find the landlord's application did not have merit. Therefore, **I do not grant** the landlord the recovery of the filing fee.

As the landlord continues to hold the tenants' security deposit of \$475.00, I will now consider whether the landlord complied with section 38 of the *Act*. The parties agreed that the tenants provided their address to the landlord by e-mail on January 21, 2014, and the landlord applied for dispute resolution two days later on January 23, 2014 claiming towards the tenants' security deposit. Based on the above, I find the landlord complied with section 38, as the landlord had fifteen days to either claim towards the tenants' security deposit or return it in full. The landlord claimed towards the tenants' security deposit within two days in accordance with the timelines permitted under section 38 of the *Act*.

As the landlord continues to hold the tenants' security deposit of \$475.00, which has accrued \$0.00 in interest since the start of the tenancy, and the landlord's claim has been dismissed in full, without leave to reapply, **I ORDER** the landlord to return the tenants' full security deposit of **\$475.00 within seven days of receiving this Decision.**

As the tenants' application was not considered due to insufficient details, **I do not grant** the tenants the recovery of their filing fee.

I grant the tenants a monetary order pursuant to section 67 of the *Act*, for the full security deposit owing to the tenants by the landlord in the amount of **\$475.00**. The tenants must first serve the landlord with the monetary order and then may file the monetary order in the Provincial Court (Small Claims) to be enforced as an order of that court.

Conclusion

The tenants' application was refused due to insufficient details. The tenants are at liberty to reapply; however, I note that the tenants' security deposit has already been dealt with in this Decision. I also note that this Decision does not extend any applicable time limits under the *Act*.

The landlord's application did not have merit and was dismissed. The landlord has been ordered to return the tenants' full security deposit of \$475.00 within seven days of receiving this Decision.

The tenants have been granted a monetary order pursuant to section 67 of the *Act*, for the return of their full security deposit owing to the tenants by the landlord in the amount of \$475.00. The tenants must first serve the landlord with the monetary order and then may file the monetary order in the Provincial Court (Small Claims) to be enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 22, 2014

Residential Tenancy Branch

