



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEGACY MANAGEMENT CONCEPTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF
MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by both the Tenants and the Landlord.

The Landlord applied for a Monetary Order for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement, being an allegation of damage to the hot tub by the Tenants during the tenancy. The Landlord also applied to recover this loss through authorisation to keep a portion of the Tenants’ security and pet damage deposits in full satisfaction of this alleged damage as well as recovery of the filling fee.

The Tenants applied for the return of the outstanding balance of their security and pet damage deposits which had been retained by the Landlord at the end of the tenancy as well as recovery of their filing fee for the cost of making their Application.

An agent for the Landlord and both Tenants appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence in advance of the hearing.

Preliminary Issues

No issues were raised by the parties in relation to the service of the written evidence to each other.

The Tenants acknowledged service of the Landlord’s Application but submitted that they had not served their own Application to the Landlord within the time limits imposed by Section 59(3) of the Act; however the Tenants had served the Application and their written evidence as a rebuttal to the Landlord’s Application as written evidence.

Based on the foregoing, as the Tenants failed to serve their Application in accordance with the Act, I dismissed their Application but proceeded to deal with the Tenants' return of their deposits through the Landlord's Application.

At the start of the hearing, the Landlord's agent submitted that another agent for the Landlord had communicated with the Tenants regarding the completion of a move out Condition Inspection Report and that the Tenants had not attended. However, the Landlord's agent was unable to testify as to the date and time arranged and had not submitted any written evidence, such as a Notice of Final Opportunity to Schedule a Condition Inspection, in relation to this prior to the hearing.

The Tenants denied ever being provided with verbal or written notice of a move out inspection date or time. The Tenants acknowledged having verbal communication with the Landlord's agent about the move out date and instructions about where the keys to the rental unit were to be left the day after they vacated the rental suite, but no arrangement was made by the Landlord's agent to complete a move out Condition Inspection report with them.

Section 23 of the Act and Part 3 of the Residential Tenancy Regulation provide detailed instructions of the reporting requirements of the Landlord and Tenant in relation to the Condition Inspection of the rental suite at the start and end of the tenancy.

These provisions require a Landlord to provide opportunities for the Tenant to take part in a condition inspection of the rental suite.

Section 24 of the Act explains that if a Landlord has failed to meet the above provisions of the Act and Regulation, then their right to claim against the Tenants' security deposit **for damage to the rental unit** has been extinguished.

Furthermore, Policy Guideline 17 to the Act states that if a Landlord has claimed against the deposit for damage to the rental unit and the Landlord's right to make a claim has been extinguished, then the arbitrator **will order return of double the deposit**.

The Landlord considered the above legal provisions and mutually agreed with the Tenant to settle the matter through a settlement agreement as follows.

Settlement Agreement

Pursuant to Section 63 of the Act, the arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

Both parties **agreed** to settle the dispute with the Landlord returning the remaining balance of the Tenant's security deposit currently held by the Landlord in the amount of \$692.57.

The Tenants are issued with a Monetary Order in the amount of **\$692.57** which is enforceable in the Small Claims court **if** the Landlord fails to make payment forthwith after receipt of this decision.

This agreement and order is fully binding on the parties and is in full and final satisfaction of **all** the issues associated with the tenancy.

The Tenants' and Landlord's Applications are now dismissed without leave to re-apply and the files are now closed.

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: September 15, 2014

Residential Tenancy Branch

