



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF, O

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain all or part of the security deposit and pet damage deposit. The named respondents did not appear at the hearing.

In filing this Application for Dispute Resolution the landlords named two tenants; however, upon review of the tenancy agreement I noted that only the female tenant had signed the tenancy agreement. Under the principle of privity of contract I excluded the male respondent a party to this dispute and I amended the Application accordingly.

The landlords submitted a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant. I heard that the address used for service was the forwarding address the landlords received from the tenant in a letter on May 26, 2014. Although the registered mail was returned as unclaimed, pursuant to section 90 of the Act, the tenant is deemed to have received the registered mail five days after mailing. Therefore, I proceeded to hear from the landlords without the tenant present.

Issue(s) to be Decided

1. Are the landlords entitled to compensation as claimed?
2. Are the landlords authorized to retain all or part of the security deposit?

Background and Evidence

The one year fixed term tenancy commenced August 1, 2013. The tenant paid a security deposit of \$625.00 and a pet damage deposit of \$625.00. The monthly rent of \$1,250.00 was due on the 1st day of every month. The tenant vacated the rental unit in May 2014 pursuant to an email she had written the landlords on February 19, 2014.

The landlords were successful in finding a replacement tenant and did not suffer a loss of rent.

The first part of the landlord's claim was for compensation of \$625.00, the amount of the security deposit. The landlords provided two grounds for this request:

- The landlords are seeking to retain the security deposit on the basis the tenant breached the fixed term tenancy agreement by ending the tenancy early and the tenancy agreement provides that the tenant would forfeit the security deposit if the lease was broken.
- The landlords also pointed out that the tenancy agreement does not provide for a "liquidated damages" clause but they should be compensated for their trouble to find replacement tenants. The landlords seek compensation equivalent to the security deposit although the landlord could not say how much time was spent on these activities.

The second part of the landlords claim was for a total of \$975.00 and entailed the following requests for compensation:

- Unreturned keys: \$50.00
The tenant failed to return keys to the rental unit. The landlords' current tenant asked for and was given permission to purchase and install a new lock on the rental unit.

As of the date of the hearing the landlords had yet to obtain a receipt for the lock purchase or compensate the current tenant for changing the lock. The landlords explained that they based this claim on an estimate he provided to them at the start of the tenancy.

- Cleaning: \$300.00
The landlords submitted that the property required additional cleaning after the tenants moved out. The landlords authorized the current tenant to withhold \$100.00 from his rent payable as compensation for his efforts, which he did.

The landlords submitted that they wish to claim an additional \$200.00 for the current tenant's other cleaning efforts; however, they have yet to compensate the current tenant other than the \$100.00 they authorized him to deduct from the rent

and did not provide anything to verify this amount is payable to the current tenant.

- The landlords seek to retain the pet damage deposit of \$625.00 as the tenants left a dog kennel on the property and the current tenant removed the fence and gate and replanted grass seed; however, they have not yet compensated the current tenant as of the date of the hearing and did not provide anything to verify this amount is payable to the current tenant.

Furthermore, the landlords described how the tenant failed to attend the move-out inspection. Upon further enquiry, I determined that the landlords had not prepared a move-in inspection report and had not proposed a specific date and time to the tenant for the move-out inspection.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The landlord provided two reasons for making a claim against the security deposit that I have analyzed below.

- Section 20 of the Act prohibits the landlord from doing certain things with respect to deposits. Paragraph (e) provides that a landlord must not “require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.”

Section 6 also provides that any term in a tenancy agreement that is inconsistent with or otherwise violates the requirements of the Act is not enforceable.

Therefore, I find the term in the tenancy agreement that provides for the forfeiture of the security deposit violates the Act and is not enforceable.

- Where a tenant ends a fixed term tenancy before the expiry date, the landlord may be entitled to compensation for losses associated to that violation; however, section 7 of the Act provides that a party making a monetary claim against the other must demonstrate that reasonable efforts were made to mitigate losses. The obligation to minimize rental losses generally entails efforts by a landlord to advertise and show the rental unit to replacement tenants. In this case, the landlord undertook such efforts to secure a replacement tenant and I make no award for compensation for meeting this statutory obligation.

With respect to the landlord's other claims, I find the landlords failed to demonstrate or verify a loss for the amount claimed other than the \$100.00 they permitted the current tenant to deduct from his rent for his cleaning efforts. Therefore, I award the landlords \$100.00 and dismiss the balance of their claims.

While the landlords are certainly at liberty to compensate their current tenant for his efforts to bring the rental unit to a satisfactory condition the landlords are now precluded from claiming such compensation against the tenant named in this Application.

Where a landlord asserts that a tenant failed to participate in a condition inspection, the issue of extinguishment arises. Extinguishment refers to the right to claim against a deposit or the right to its return. With respect to the landlord's submission that the tenant failed to participate in the move-out inspection, I find the landlords had already extinguished the right to make claims against the security deposit and pet damage deposit for damage due to their failure to prepare a move-in inspection report. Further, it is the landlord that is required to take the first step in proposing a specific date and time to the tenant for purposes of conducting a condition inspection and I find the landlords did not demonstrate that obligation was met. Therefore, I find the landlords had extinguished the right to claim against the deposits for damage and I find the tenant had not extinguished her right to the return of the deposits.

Having found the landlords entitled to compensation of \$100.00 and the tenant entitled to return of the deposits, I offset the \$100.00 award to the landlord against the deposits and I order the return of the balance of the deposits to the tenant in keeping with Residential Tenancy Policy Guideline 17: *Security Deposit and Set-Off*.

The landlords are ordered to return the net amount of \$1,150.00 to the tenant without further delay. The tenant has been provided a Monetary Order in this amount to serve upon the landlords and enforce as necessary.

Conclusion

The landlords have been awarded compensation of \$100.00 and have been ordered to return the balance of the deposits in the net amount of \$1,150.00 to the tenant without further delay. The tenant has been provided a Monetary Order in this amount to serve upon the landlords and enforce as necessary.

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: October 21, 2014

Residential Tenancy Branch

