



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This Review Hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to recover the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on May 1, 2013 for a fixed term to expire on April 30, 2014. The Tenants gave a month's notice to end the tenancy for April 30, 2014 and moved out on that date. Rent of \$1,000.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$980.00 as a security deposit. The Landlord returned \$470.84. The Landlord has not made an application for dispute resolution to claim all or part of the security deposit.

The Landlord states that he retained a portion of the security deposit for damages to the unit and that the Tenant had agreed to the damages as indicated on the move-out

condition report that the Tenant signed. The Tenant states that they did not receive a copy of the move-out report and that although the Tenant did sign a copy of a move-out report following the inspection, the Landlord's copy is not the document she signed. The Tenant pointed to the darker notations on the document and states that these were not notations made at the time of signing. It is noted that no amount of damages is indicated in the area signed by the Tenant as agreeing to an amount owed.

The Tenant states that after giving their notice to end tenancy they agreed to stay at the unit for another month, May 2014, because the Landlord was looking for suitable tenants. The Tenant states that the Landlord had been given a cheque for May 2014 but that between April 1 and 21 the move-out date went back and forth. The Tenant states that they found another place to rent and asked the Landlord to rent the unit for a May 15, 2014 occupancy. The Tenant states that on April 21, 2014 they believed that the Landlord had obtained a tenant for May 1, 2014 as on April 21 the Landlord asked them to move by April 30, 2014 and communicated with them to ensure that the unit was empty and the carpet was cleaned before the end of April, 2014. The Landlord also scheduled the move out inspection. The Tenant provides copies of communications between the Parties on April 21, 2014 and on April 29, 2014. The Tenants state that they were informed by their adjacent unit neighbour that new tenants move in at the beginning of May 1, 2014. There is no dispute that the Landlord cashed the May 2014 rent cheque from the Tenants. The Tenants claim return of \$980.00 and \$41.00 for the overdraft costs incurred by the budget shortfall.

The Landlord states that upon receiving the notice to end tenancy the unit was initially advertised for a May 1, 2014 occupancy and that on April 4, 2014 new tenants were found however these tenants could only take the unit for May 31, 2014 so the Tenants agreed to stay for the month of May 2013. The Landlord states that on or about April 11, 2014 the prospective tenants changed their mind about renting the unit entirely and that on April 16, 2014 the Tenants told him they had changed their mind about staying for May 2014 as they had found a place to move into for May 2014. The Landlord states that the unit was advertised again but since it was late in the month and included

an Easter week-end there were no responses to his advertisement the unit was not rented until June 1, 2014.

The Parties accused each other of being dishonest.

Analysis

Section 30 of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

Given the clearly different notations on the move-out report, I accept the Tenant's evidence that the Landlord's copy of the move-out report is not the same copy that the Tenant signed and that the evidence of damage and notations of costs contained on the move-out report are not reliable indicators of any costs or damages agreed to by the Tenant. Further, although the Tenant signed the area of the move-out report that indicated an agreement to a deduction no amount is noted for such a deduction. I find therefore that the Tenant has substantiated that the Landlord had no right to retain any portion of the security deposit.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

As the Landlord did not returned the full amount of the security deposit and did not make an application for dispute resolution I find that the Tenants are entitled to return of double the security deposit of \$980.00 plus zero interest in the total amount of **\$1,980.00.**

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Rent is payable until the tenancy ends. Given that both Parties did not dispute that the Tenants did agree after ending their notice for April 30, 2014 to stay in the unit until the end of May 2014, I find that the Tenants, by making this agreement, extended their notice to end tenancy and were liable for rent to the end of May 2014. Although the Tenants state that the unit was rented for May 1, 2014 the Tenants provided no supporting evidence such as a Witness statement and I find that the indirect evidence from a third party is not compelling enough to outweigh the Landlord's plausible evidence of a rental for June 1, 2014. I therefore dismiss their claim for return of May 2014 rent.

As the Tenants' application has met substantially with success I find that the Tenants are entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$2,030.00**. Deducting the **\$470.84** already received from the Landlord leaves

I deduct this amount from the entitlement leaving **\$1,559.16** owed by the Landlord to the Tenants.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$1,559.16**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: November 7, 2014

Residential Tenancy Branch

