



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, FF

Introduction

This hearing was convened in response to applications by the tenants and the landlord.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit;
2. For a monetary order for compensation under the Act; and
3. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issues to be Decided

Are the tenants entitled to double the security deposit?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The parties agreed the tenancy began on April 22, 2013. Current rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenants. The tenants vacated the premises on June 27, 2014.

Tenants' application

The tenants claim as follows:

| | | |
|----|--|------------------|
| a. | Double the security deposit (\$400.00) | \$ 800.00 |
| b. | Filing fee | \$ 50.00 |
| | Total claimed | \$ 850.00 |

The tenants paid a security deposit of \$400.00. The tenants vacated the premises on June 27, 2014.

The tenant testified that they provided the landlord with their forwarding address in writing on July 3, 2014. Filed in evidence is a copy of the letter.

The landlord acknowledged that they received the tenants' forwarding address as stated by the tenant. The landlord stated that they did not file an application for dispute resolution or return the deposit within 15 days after it was received.

Landlord's application

The landlord claims as follows:

| | | |
|----|---------------------------|-------------------|
| a. | Unpaid rent for June 2014 | \$ 900.00 |
| b. | Cleaning costs | \$ 216.00 |
| c. | Filing fee | \$ 50.00 |
| | Total claimed | \$1,166.00 |

Unpaid rent for June 2014

The landlord testified that the tenants did not pay any rent for June 2014.

The tenant agreed they did not pay rent for June 2014.

Cleaning costs

The landlord testified that the tenants did not clean the rental unit and his wife spent 12 hours cleaning the appliances, cabinets, walls, bathroom, and floors.

The tenant testified that they move their furniture out on June 23, 2014, however, they informed the landlord that they would be back later in the week to do the cleaning as the tenancy was legally ending on July 31, 2014. The tenant stated when they returned the landlord had changed the locks.

The landlord does not dispute the locks were change. The landlord stated that they did not believe the tenants would be returning.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, each party has the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Tenants' application

There was no evidence to show that the tenants had agreed, in writing, that the landlord could retain any portion of the security deposit.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit, plus interest.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenants the sum of **\$800.00** comprised of double security deposit (\$400.00) on the original amounts held.

Landlord's application

Unpaid rent for June 2014

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence of the parties was that the tenants did not pay any rent owed for June 2014. At no time do the tenants have the right to simply withhold rent because they feel they are entitled to do so. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$900.00**.

Cleaning costs

In this case, the landlord changed the locks prior to the effective date of the tenancy ending. I find the landlords action deprived the tenants the right to clean the rental unit.

Further, I find the landlord has failed to prove the condition of the rental unit at the end of the tenancy as no move-out condition inspection report was completed and no photographs were submitted as evidence. Therefore, I dismiss this portion of their claim.

I find that the landlord has established a total monetary claim of **\$900.00** comprised of the above described amount.

As both parties were successful with their application, I decline to award the filing fee to either party as these amounts simply offset each other.

Under the Residential Tenancy Policy Guideline #17, where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties

As a result, I find the tenants' monetary award of **\$800.00** will be offset from the landlord's monetary award of **\$900.00** and the landlord will be granted a formal order for the balance due of **\$100.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants were successful with their application. The landlord was successful with their application. Their respective monetary awards were off-set. The landlord was granted a formal monetary order for the balance due.

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: January 28, 2015

Residential Tenancy Branch

