



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, FF
 Tenants: MNDC

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to and cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act* (Act).

It must also be decided if the tenants are entitled to a monetary order for money owed or compensation for damage or loss resulting from the tenancy, pursuant to Sections 67, and 72 of the Act.

Background and Evidence

The landlord testified the tenancy began on January 1, 2014 as a month to month tenancy for the monthly rent of \$750.00 due on the 1st of each month with a security deposit of \$350.00 paid. The landlord submits the tenancy ended on June 4, 2014 when the tenancy vacated the rental unit. The tenants submit they moved out of the rental unit on June 1, 2014.

The landlord submits the tenants left the rental unit unclean and in disrepair. The landlord testified that the tenants had caused damage to the fridge door so that it would not close (\$500.00); that the tenants had left water running and ruined the bathroom floor (\$400.00); that the carpeting was stained with coca cola, dog and cat feces and urine, and cigarette burns (\$800.00).

The landlord also claims the rental unit required extensive cleaning (\$250.00) and garbage removal (\$80.00) as well the yard was unkempt (\$200.00). The landlord also states he had a verbal agreement with the tenants to pay him \$700.00 for moving the tenants to their new location.

The landlord testified that he had returned \$200.00 of the tenants' security deposit. The landlord submitted that he a receipt but that he had not submitted it as evidence. The tenants testified that they had not received any portion of the deposit back but rather that they were informed that the landlord paid their new landlord some of the deposit but they were never informed of how much.

The landlord testified that he had completed a move in and move out condition inspection and that he had several photographs of the condition of the rental unit at the end of the tenancy. The landlord stated that he did not send in any of the photographs because his camera had gone missing and was only recently found. The landlord did not provide copies of Condition Inspection Reports for either the start or the end of the tenancy.

The tenants submit that all off the problems the landlord has identified by the landlord as damage were in that condition when they moved into the rental unit. They also testified that they cleaned the rental property prior to the end of the tenancy. The tenants also state that they did not ever discuss paying for help moving with the landlord.

The tenants seek compensation for damage to their personal property during their move out. Specifically, the tenants submit the landlord broke or damaged the following items: microwave; dishes; collector plates, glasses, and dolls; crystal set; clock; and missing tools such as rakes; shovels and garden tools. The tenants seek \$200.00 as compensation for this damage. The landlord submits that he did not cause any damage to the tenants' belongings, nor did anyone that was helping the tenants move.

The tenants seek an additional \$1,225.00 for compensation for suffering and being required to move. The parties agree the landlord gave the tenants a verbal notice to end the tenancy in mid May 2014. The landlord submits he followed up with a written notice. The tenants provided no evidence that they attempted to seek a cancellation of the landlord's notice to end tenancy by submitting an Application for Dispute Resolution seeking to cancel any notice to end tenancy.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;

3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In addition, when the preponderance of evidence is verbal testimony from both parties and that testimony is disputed by the responding party it is incumbent upon the party with the burden of proof to provide additional evidence in support of their claim.

In the case before me the landlord provided only verbal testimony and no documentary evidence of the condition of the rental unit at the start or end of the tenancy. As such, and in conjunction with the tenants' testimony that disputes the landlord's testimony in regard to the condition of the rental unit, I find the landlord has failed to provide sufficient evidence that he has suffered any loss or if he did that the loss resulted from the tenancy. I therefore dismiss this portion of the landlord's Application for Dispute Resolution.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

Again, as the tenants do dispute that they had agreed to the payment of any money to the landlord for assistance in moving them, I find the landlord has failed to provide any other evidence that such an agreement existed. Therefore, I dismiss this portion of the landlord's Application.

Similarly, I find that the tenants have provided no evidence to contradict the landlord's testimony disputing that he broke any of their personal possessions and I dismiss this portion of the tenant's Application for Dispute Resolution.

As to the tenant's claim for compensation for suffering and requiring them to move, I again find the tenants have provided no evidence that they suffered a loss for having to move. I also find that even if the tenants had suffered a loss as a result of having to move they made no attempt to have the notice cancelled. If they had applied for dispute resolution the notice to end tenancy may have been cancelled. As the tenants took no action I find that even if they suffered a loss they took no steps to mitigate the loss. I therefore dismiss this portion of the tenant's Application for Dispute Resolution.

Finally, as to the security deposit, I find that despite the landlord's testimony that he returned a portion of the deposit to the tenants and that he has a receipt of such he has failed to provide any proof of such a return. In conjunction with the tenant's dispute that the landlord returned any portion to them, I find the landlord has failed to return any portion of the deposit.

As I have dismissed all of the landlord's financial claims above, I find the landlord is not entitled to retain any portion of the tenants' security deposit.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$350.00** comprised of the full amount of the security deposit paid by the tenants at the start of the tenancy.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: January 14, 2015

Residential Tenancy Branch

