



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAROD PROPERTIES CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LANDLORD: MNSD, FF
TENANT: MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking to retain part of the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of double the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on September 18, 2014. This is 18 days after the Landlord made his application. The Landlord said the Notice of Hearing was not emailed to him or his agent so the service of documents had to wait until the Landlord returned from out of country on September 16, 2014 and after he obtained replacement documents. The Landlord said he was out of the country so he hired an agent to serve the documents and because the agent did not receive the email he could not serve the Notice of Hearing and Hearing package. The Landlord said he served the Tenants by registered mail after his return to the county on September 18, 2014. Hearing documents are to be served 3 days after the application is made or as specified by the director. The Landlord served the Tenants 18 days after the application was made because the Landlord said his agent did not receive the documents from the Residential Tenancy Branch. The Landlord provided the agent who gave affirmed witness testimony that he did not receive the Notice of Hearing and the hearing package and the Landlord had to request the RTB to resend the documents on September 16, 2014. I accept the Landlord and Witness's testimony that the service of documents to the Tenants was delayed due to agent not receiving the Hearing package from the RTB. The service of documents was not in accordance with sections 59 and 89 of the Act, but the Acts says the director can accept service for a different period of time. Therefore I accept the Landlord's service of document on September 18, 2014; first because of the email issues and secondly because the late service does not prejudice the rights of the Tenants.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on September 20, 2014, in accordance with sections 59 and 89 of the Act.

The Landlord and Tenants both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to retain part of the Tenants' deposits?

Tenant:

1. Are the Tenants entitled to recover double the security deposit?

Background and Evidence

This tenancy started on March 1, 2013 as a fixed term tenancy with an expiry date of February 28, 2014 and then continued on a month to month basis. Rent was \$1,900.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$950.00 on January 31, 2013 and a pet deposit of \$950.00 on March 1, 2013. Condition inspection reports were completed at the start and end of the tenancy. The Tenants did not sign the move out condition inspection report but did give the Landlord their forwarding address on the report which is dated August 31, 2014. The tenancy ended August 31, 2014.

The Landlord said on March 16, 2014 the rental unit had a sewer drain blockage that required the services of a plumber. The Landlord said the plumber attended the rental unit and cleared the sewer drain with a plumbing snake. The Landlord said the plumber said the cause of the drain blockage was baby wipes in the drain pipe. The Landlord continued to say that he presented the bill for the plumber to the Tenants and the Tenants refused to pay it. As a result the Landlord retained \$316.05 for the plumbing bill and \$50.00 for the filing fee from the Tenants' security deposit at the end of the tenancy. The Landlord told the Tenants he was retaining this amount and that he was making an application to the Residential Tenancy Branch for an order to retain \$366.05 of the Tenants' security deposit. The Landlord said the move out inspection was good and he returned the Tenants' pet deposit of \$950.00 and \$583.95 of the security deposit in the first week of September, 2014. The Tenants confirmed that they received those cheques and that they cashed the cheques on September 11, 2014.

The Landlord said he has made this application to obtain an order to retain \$366.05 of the Tenants' security deposit as compensation for the plumbing bill to open the sewer drain blockage which the Landlord believes was caused by the Tenants putting baby wipe down the toilet. The Landlord submitted a paid plumbing receipt for \$316.05 as supporting evidence.

The Landlord provided a witness the plumber to confirm his testimony. The Witness C.Z. said he was at the rental unit on March 16, 2014 to open a blocked sewer drain. The Witness said he cleared the drain with a plumbing snake and he pulled out of the drain what he believed to be baby wipes. The Witness said the baby wipes blocked the drain and he told the tenants in the units not to put baby wipes into the drain. As well the witness C.Z. said some of the plumbing pipes appeared to be new and the plumbing appeared to be in good condition. The Tenants asked the Witness if he inspected the pipes underground. The Witness said that he did not but he had no reason to think there was anything wrong with the pipes because after he removed the baby wipes the sewer drained as it should.

The Tenants said that they made their application because the Landlord had not returned their full security deposit or had made an application to retain their security deposit within 15 days of the end of the tenancy or 15 days after receiving the Tenants' forwarding address in writing. The tenancy end August 31, 2014 and the Tenants' gave the Landlord their forwarding address on the move out condition inspection report on August 31, 2014. As a result the Tenants said they have applied for double their security deposit in the amount of $\$950.00 \times 2 = \$1,900.00$ pursuant to section 38 of the Act.

In response to the Landlord's application the Tenant's said they questioned the Landlord about the capacity of the sewer as the unit had just been converted into a duplex. The Tenants said they thought the drain issue may be a result of higher water usage and older pipes that may not have been maintained. The Tenants said the baby wipes were actually diaper liners and the packaging said they were flushable. The Tenant said they had been using the liners since December, 2013, but stopped flushing the liners down the toilet after the plumbing incident of March 16, 2014. The Tenants said the Landlord has not proven beyond a doubt that the pipes are in good condition and the diaper liners were the only reason for the blocked drain.

The Tenants said they are requesting double their security deposit in the amount of \$1,900.00 and they do not believe the Landlord has proven that they are the sole cause for the blocked drain.

Analysis

In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

The Landlord has proven the loss in the amount of \$316.05 and the Landlord has verified the loss with a paid receipt. As well the Landlord provide a Witness who is with a recognized plumbing and heating company and the Witness said the drain blockage problem was due to putting baby wipes or diaper liners in the toilet. Further the Witness gave testimony that no additional drain problems have incurred in the rental unit after the Tenants stopped putting baby wipes down the toilet. The Witness said it is his opinion that the Tenants putting baby wipes in the toilet caused the problem. I accept the Witness testimony. Consequently I find the Landlord has established grounds to prove the Tenants caused the drainage issue and therefore the Tenants are responsible for the plumbing bill of \$316.05.

As the Landlord has been successful in this matter I order the Landlord to recover the \$50.00 filing fee for this proceeding from the Tenants. I order the Landlord to retain the remaining amount of the security deposit that the Landlord is holding in the amount of \$366.05 as full settlement of the Landlord's application. This amount represents the plumbing bill of \$316.05 and the \$50.00 filing fee for his application.

With respect to the Tenants' application for double their security deposit in the amount of \$1,900.00.

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) **make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenants' testimony and written evidence that they did give the Landlord a forwarding address in writing on August 31, 2011. The Landlord did repay the pet deposit and a portion of the security deposit to the Tenant within 15 days of the end of the tenancy and after receiving a forwarding address in writing from the Tenants. As well the Landlord made **an application** to retain the balance of the security deposit on the same day as the tenancy ended and the Landlord received the Tenants' forwarding address in writing. Consequently the Tenants have no grounds to apply for double their security deposit as the Landlord made his **application** within the 15 days. I understand the Tenants did not receive the Landlord's application until September 19, 2014, but this is not a requirement under section 38 of the Act. Consequently I dismiss the Tenants' application without leave to reapply.

As the Tenants have not been successful in this matter I order the Tenants to bear the cost of the filing fee of \$50.00 that they have already paid.

Conclusion

I order the Landlord to retain \$366.05 of the Tenants' security deposit.

The Tenants' application is dismissed without leave to reapply.

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: March 10, 2015

Residential Tenancy Branch

