



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application by the Tenants for a monetary order for return of double the security deposit, one months rent as compensation pursuant to sections 49 and 51 of the Act and recovery of the filing fee for the claim.

The hearing began on March 2, 2015 and continued on April 14, 2015. The Tenant, B.S., appeared on her own behalf. She also claimed to have verbal authority to act as agent for L.H., J.B., S.B. and J.N., indicating they were working and therefore unavailable during the March 2, 2015 and April 14, 2015 hearing. The property owner, J.D-L. and her property manager, F.S. appeared on behalf of the Landlord.

Both parties gave affirmed 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

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for return of double the security deposit?
2. Are the Tenants entitled to a monetary order equivalent to a month's rent pursuant to sections 49 and 51?
3. Should the Tenants recover the fee paid to file their application?

Background and Evidence

B.S. testified that she and the other Tenants rented both the upstairs and downstairs of a duplex owned by the previous owner, M.D.. Monthly rent was \$2,100.00 per month, payable on the first of the month.

B.S. stated that in total the Tenants paid a security deposit of \$1,050.00.

Introduced in evidence was a 2 Month Notice for Landlord's Use, issued on May 31, 2014, indicating the previous owner M.N. had sold the rental unit and the purchaser had asked the Landlord to issue the Notice as the purchaser's family intended to occupy the rental unit.

The parties agreed that the Tenants moved out on July 31, 2014. B.S. stated this was because July 31, 2014 was the effective date of the Notice. M. D-L. testified that she was unaware a Notice had been given until the Tenants made the within application. In any case, the Landlord did not have an application before me.

The parties further agreed that the Tenants paid the May rent as well as the first week of June's rent to the previous owner, M.D. B.S. testified that the balance of June's rent as well as July 2014 was paid to the new owner, M.D-L.

Introduced in evidence were copies of the move in and move out condition inspection reports. On the move out condition inspection report, B.S. confirmed her agreement that \$1,050.00 was to be paid from the security deposit to the Landlord for compensation for damages and cleaning of the rental unit. During the March 2, 2015 hearing, B.S. claimed to be unaware that the security deposit had been signed over by the Tenants until I brought this to her attention. Upon reviewing the move out condition inspection, and confirming her signature, B.S. agreed that she was no longer seeking return of the security deposit.

B.S. testified that the Tenant, J.N., received the sum of \$200.00 from the Landlord. When asked whether any of the other Tenants received money from the Landlord, B.S. stated that she did not know.

At the conclusion of the March 2, 2015 hearing, I stated to B.S. that I was concerned that she was appearing on behalf of the other Tenants, yet did not appear to have information as to what amounts had been returned to them by the Landlord. Despite raising this concern, B.S. again appeared at the April 14, 2015 hearing on her own again stating that the other Tenants had to work and were otherwise not available.

M.D-L. testified that the Tenants paid \$1,150.00 in rent for the month of July, which represented rent for the upstairs only as J.N., one of the Tenants in the lower suite, moved upstairs. The Landlord further testified that she paid J.B. the sum of \$475.00 and paid J.N. the sum of \$915.00 such that \$1,390.00 had already paid to the Tenants.

M.D-L. testified that when she bought the property she was very happy the property was occupied and rented as she had intended to rely on the rental income. She stated that she paid J.B. and J.N. the above sums when they agreed to vacate as she intended to move her sister into the lower unit. She further testified that she was not aware the previous owner had issued the 2 Month Notice and was not aware the Tenants were moving out until late in the afternoon on July 20, 2014.

The Landlord requested that the Tenants' application be dismissed for the following reasons:

1. B.S. signed over their security deposit on the move out Condition Inspection Report;
2. the Tenants only paid rent in the amount of \$1,150.00 for the month of July 2014 and received the benefit of \$850.00 in free rent;
3. the Landlord already paid the Tenants, J.N. and J.B. the sum of \$1,390.00 as compensation when they moved from the downstairs suite; and
4. in total the Tenants have received the benefit of \$2,240.00 (\$850.00 + \$1,390.00), which is more than the \$2,100.00 in potential compensation pursuant to sections 49 and 51.

Analysis

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

Although B.S. made a claim for double the security deposit, she clearly signed the move out condition inspection report confirming the Landlord was permitted to retain the totality of the \$1,050.00 deposit. As such, her claim for return of double the deposit is dismissed.

I find that the Landlord, in accepting rent from the Tenants for June and July 2014, is potentially liable for the one month compensation pursuant to sections 49 and 51 even though the 2 Month Notice was issued by the previous property owner.

The Tenant bears the onus of proving her claim for one month's compensation pursuant to sections 49 and 51 of the Act.

B.S., while purporting to act as agent for the other Tenants was not able to answer basic questions regarding the Tenants' claims. She was not able to confirm the amounts already provided to them by the Landlord and she was not aware that the Tenants in the downstairs unit, J.N. and J.B., did not pay rent for July 2014 and as such, already benefited from a month's free rent.

I accept the evidence of the Landlord that in addition to providing a free month's rent for the downstairs unit, that she also provided J.N. and J.B. the sum of \$1,390.00 such that the Tenants have already been compensated \$2,240.00 (\$850.00 + \$1,390.00), which is more than the \$2,100.00 in potential compensation pursuant to sections 49 and 51.

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. In this case, I find that the Tenants have failed to prove they are owed one month's rent in compensation pursuant to sections 49 and 51 of the Act and accordingly I dismiss their claim in its entirety.

Conclusion

The Tenants failed to prove they are entitled to payment equivalent to one month's rent pursuant to sections 49 and 51. I accept the Landlord's evidence that the Tenants have already received a financial benefit which exceeds the sum sought. The Tenants' Application is dismissed in its entirety.

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: May 08, 2015

Residential Tenancy Branch

