



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Tenant MNSD, MNDC, FF
	Landlord MND, MNDC, MNSD, FF

Introduction

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

The Landlords filed seeking a monetary order for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of the security deposit, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on October 17, 2014, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on May 7, 2015, in accordance with section 89 of the Act.

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

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Are the Landlords entitled to compensation for damages and if so how much?
3. Are there losses or damages to the Landlords and if so how much?
4. Are the Landlords entitled to compensation for loss or damage and if so how much?
5. Are the Landlords entitled to retain the Tenants' deposits?

Tenant:

1. Are the Tenants entitled to recover the security deposit?
2. Are there losses or damages to the Tenants and if so how much?
3. Are the Tenants entitled to compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started on July 1, 2014 as a month to month tenancy. Rent was \$1,000.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$500.00 on June 15, 2014. A walk through inspection was done and a note was written about the walk through, but the note was not signed and the condition inspection was not done on an approved form. The Tenant said no move out condition inspection report was completed or signed as well.

The Landlord's agent said she was a property manager and she did the move in walk through but as it was her first rental as a property manager she did not have the correct form and she was not fully aware of the importance of the move in condition inspection report. As a result the Landlord's agent did not complete and sign a move in condition inspection report.

Further the Landlord's agent said the Landlords have not done the repairs to the property because the Landlords could not afford to complete the repairs at this time. The Landlord's agent continued to say the Landlords' claim is an estimate of what the Landlords think the costs will be to repair the property. The Landlord's agent said the work has not been done as of yet.

The Landlords submitted an evidence package with pictures and descriptions of the damage to the property. The damage included landscape work at \$4,095.00, deck materials at \$350.00, other materials at \$100.00, door repairs at \$1,696.00, fence repairs and materials at \$170.00, cleaning costs at \$100.00, wall repairs at \$300.00 and a new screen at \$50.00. The Landlords' evidence package contains photographs and written descriptions of the damage as well as support letters from witnesses.

The Tenants said the Landlords issued a 2 Month Notice to End Tenancy dated September 1, 2014 with an effective vacancy date of October 31, 2014. The Tenant said they moved out of the unit to comply with the Notice on September 30, 2014 and they did not receive any compensation as required by the 2 Month Notice to End Tenancy. The Tenant said they paid the September, 2014 rent of \$1,000.00 and under the Act they should receive compensation equal to one month's rent. The Tenants said they have applied for \$1,000.00 as compensation as per the 2 Month Notice to End Tenancy issued to them on September 2, 2014. The Tenants said they have not received any compensation to date.

Further the Tenants said they have not received their security deposit of \$500.00 back and they gave the Landlord their written forwarding address in a letter mailed to the Landlord by registered mail on October 3, 2014.

The Tenants said their total claim is for \$1,500.00 plus the filing fee for this application if they are successful.

Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenant's security or pet deposit is extinguished. I find the Landlord's agent did not complete an adequate move in or move out condition inspection report therefore the Landlords' claim against the Tenants' security deposit for damage is extinguished. As a result, I dismiss without leave to reapply the Landlords' request to retain the Tenants' security deposit.

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit. In this situation the Landlord's agent may have established there was damage to the rental unit but the Landlord's agent has not proven the Tenants were solely responsible for the damage or that the Tenants did the damage. Further 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.

Although the Landlord's agent may have established there was damage during the tenancy the Landlord's agent has not provided any verification to prove the amounts of the loss or receipts to verify the amounts to rectify the loss or damage. Compensation cannot be awarded on unproven estimates. The Landlord's agent has not established

grounds to prove the Landlords' claims. Consequently I dismiss the Landlords' claim for damage to the unit, site or property and claims for loss or damage based on lack of evidence to establish a claim. The Landlords hired a Property Manager whose business it is to manage rental properties therefore move in and move out condition inspection reports should have been completed and signed to establish a baseline for the condition of the rental unit at the start of the tenancy and the condition of the unit at the end of the tenancy. As these reports were not completed; I dismiss with leave to reapply the Landlords' application for damages to the unit, site or property, for loss or damage under the Act, regulations or tenancy agreement and to retain the Tenants' security deposit.

With respect to the Tenants' application for compensation under section 51 of the Act; I find as follows:

Section 51 (1) of the Act says a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

Consequently as the Tenants paid the September, 2014 rent of \$1,000.00 and moved out of the unit on September 30, 2014; I find the Landlord is responsible to pay the Tenants the equivalent of one month's rent in the amount of \$1,000.00.

Further as the Landlords' claim against the Tenants' security deposit has been extinguished due to not complying with the Act in regards to inspection reports; therefore I order the Landlords to return the Tenants' security deposit of \$500.00 forthwith.

As the Tenants have been successful in this matter I order the Tenants to recover the \$50.00 filing fee for this proceeding from the Landlord. As the Landlord has not been successful in this matter I order the Landlords to bear the \$50.00 filing fee for their application, which they have already paid.

A monetary order has been issues to the Tenants for the following:

Compensation for Notice	\$ 1,000.00	
Security deposit	\$ 500.00	
Filing fee	\$ 50.00	
Total		\$ 1,550.00

Conclusion

A monetary order has been issued to the Tenants' for \$1,550.00.

The Landlords' application is dismissed with 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: May 26, 2015

Residential Tenancy Branch

