



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing concerns an application by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The owner of the subject unit is "LR." The 2 individuals named as the landlord in this dispute ("YFX" & "SWS") previously entered into a fixed term tenancy with "LR" in the subject unit, for the period from January 01, 2014 to December 31, 2014. However, for reasons unknown, "YFX" & "SWS" vacated the unit effective June 30, 2014. With "LR's" consent, "YFX" & "SWS" sublet the unit to the 2 persons named as tenants in this dispute. Following from all of the foregoing, I find that even while "YFX" & "SWS" do not consider themselves to be landlords, in the circumstances of this dispute I find that when they sublet the unit, they themselves became landlords. In this regard, the attention of the parties is drawn to the section 1 of the Act which addresses **Definitions**, and provides in part as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Pursuant to a written tenancy agreement, only a partial copy of which is in evidence, the fixed term of the subject tenancy is from July 01, 2014 to June 30, 2015. The tenancy agreement documents that monthly rent of \$2,000.00 is due and payable in advance on the 10th day of

each month, although during the hearing landlord “SWS” acknowledged that he and his wife (landlord “YFX”) did not fully understand all that they were doing when the sublet began. A security deposit of \$1,000.00 was collected, and a move-in condition inspection report was completed with the participation of both parties.

As the tenancy progressed, it appears that the landlords became aware of persons other than the tenants living in the unit. In the result, it further appears that the parties reached a mutual agreement to end tenancy. For practical purposes the parties agreed that the tenants vacated the unit on August 10, 2014. While it appears that the parties completed a walk-through of the unit at the end of tenancy, the move-out condition inspection report appears to bear only the signature of the unit owner, “LR.” New renters took possession of the unit effective from August 11, 2014.

There is conflicting testimony around whether and / or how the tenants may have informed the landlords of their forwarding address. During the hearing, the landlords claimed that they first became aware of the tenants’ forwarding address when they received the tenants’ hearing package. There is no documentary evidence before me in relation to any other manner in which the tenants may have provided a forwarding address.

In their application the tenants specifically appear to be seeking reimbursement of rent for the period from August 11 to 31, 2014, compensation reflecting the double return of the security deposit, and recovery of the filing fee.

For their part, the landlords testified that certain monies are still owed by the tenants:

- \$85.05: *hydro*
- \$23.73: *gas*
- \$120.00: *carpet cleaning*
- \$150.00: *general cleaning in the unit*
- \$96.18: *changing locks + keys*

The landlords also claim that repairs are required to a wall damaged by the tenants. However, to date, no repairs have been undertaken and no estimate of the associated cost has been provided. Finally, the landlords have not themselves filed an application for dispute resolution.

During the hearing, discussion between the parties led to a limited resolution of the dispute, and related details are set out below.

Analysis

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a partial resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the landlords will reimburse the tenants' rent for the period from August 11 to 31, 2014 in the amount of **\$1,354.84**;
- that the tenants agree to the landlords' withholding of **\$108.78** from the above amount with respect to utilities (hydro: \$85.05 + gas: 23.73);
- that the net amount therefore agreed to be paid by the landlords to the tenants is **\$1,246.06**.

As the parties were able to reach a partial settlement of the dispute, I find that the tenants have established entitlement to recovery of ½ the filing fee in the amount of **\$25.00** ($\$50.00 \div 2$).

Following from the partial settlement, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,271.06** ($\$1,246.06 + \25.00).

REMAINING ISSUE(S) IN DISPUTE

\$2,000.00: *(2 x \$1,000.00) the double return of the security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

During the hearing the tenants confirmed that the address shown for them on their application for dispute resolution is their current address. During the hearing the landlords confirmed that as they have a copy of the tenants' application for dispute resolution, they also now have a forwarding address for the purposes of section 38 of the Act.

The landlords testified that they will be absent from within the next several days until August 10, 2015. **I find that the landlords will have 15 days from August 10, 2015 to deal with the tenants' security deposit in accordance with section 38 of the Act.** In the event that the landlords fail to comply with section 38 of the Act, the tenants have the option to file another application for dispute resolution in which they seek resolution of that aspect of the dispute. In the meantime, that aspect of the tenants' application is hereby dismissed with leave to reapply.

Conclusion

The tenant's application for a monetary order for compensation reflecting the double return of the security deposit is hereby dismissed with leave to reapply.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,271.06**. Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court and 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: July 14, 2015

Residential Tenancy Branch

