



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord and his agent, AS, and the two tenants attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord confirmed that his agent had authority to represent him at this hearing. "Landlord KL," who is the landlord named on the tenancy agreement along with the landlord named in this application, provided witness testimony on behalf of the landlord at this hearing.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's Application.

The tenants indicated that they received the landlord's 24-page written evidence package on August 12, 2015, which is late as it is less than 14 days prior to this hearing, as per Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord's 24-page written evidence package. The tenants confirmed that they were prepared to proceed with this hearing on the basis of the landlord's 24-page written evidence package with the exception of 3 documents,

including a real estate listing of their home, their social media webpage and a screen shot of the landlord's agent's email inbox page. The tenants indicated that they had previously received and reviewed the other documents included in the above package, during the course of this tenancy. Accordingly, I excluded the above 3 documents from this hearing and my decision, given that they were served late as per Rule 3.14 of the RTB *Rules*, I found that they were not responsive to the tenants' written evidence, and the evidence was available to the landlord at the time he filed his Application and it should have been served at that time.

The landlord confirmed receipt of the tenants' written evidence package on August 11, 2015. During the hearing, I clarified with the landlord that this evidence was served at least 7 days prior to this hearing and was not late as per Rule 3.15 of the RTB *Rules*. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the tenants' written evidence package.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

Both parties agreed that this fixed term tenancy began on November 1, 2014 and ended on January 29, 2015. Monthly rent in the amount of \$850.00 was payable on the first day of each month. A security deposit of \$425.00 and a pet damage deposit of \$425.00 were paid by the tenants and the landlord continues to retain both deposits.

The landlord's agent confirmed that she was seeking a monetary order of \$1,686.12 plus the \$50.00 filing fee and registered mail costs of \$27.51 for mailing the landlord's Application to the tenants for this hearing. During the hearing, I advised the landlord

that the only hearing-related costs that are recoverable under section 72 of the *Act* are for filing fees for applications.

The landlord seeks \$850.00 for a loss of February 2015 rent, \$31.44 for unpaid January 2015 gas utilities, \$25.90 for unpaid December 2014 gas utilities, \$174.08 for a loss of February 2015 utilities, \$166.95 for the installation labour and \$190.40 and purchase of a television unit, \$121.35 for painting and \$126.00 for carpet cleaning.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, both parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that the landlord will retain the tenants' entire security deposit of \$425.00 and pet damage deposit of \$425.00;
2. Both parties agreed that the tenants will pay \$225.00 to the landlord by August 26, 2015, by way of a bank draft to be given to landlord KL in person;
3. The landlord and/or landlord KL agreed to issue a receipt to the tenants to confirm the above payment in condition #2;
4. The landlord agreed to bear the cost of the \$50.00 filing fee for this Application;
5. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord's Application at this hearing and any issues arising out of this tenancy;
6. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenants' potential claims against the landlord and landlord KL and any issues arising out of this tenancy;
7. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties testified at the hearing that they understood and agreed to the above settlement terms, free of any duress or coercion. Both parties confirmed that they understood that the above terms are legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy. Landlord

KL also agreed to the above settlement agreement and terms, as a landlord of this rental unit.

Conclusion

To give effect to the settlement reached between the parties, I order the landlord to retain the tenants' entire security deposit of \$425.00 and pet damage deposit of \$425.00, totaling \$850.00.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$225.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenants fail to abide by condition #2 of the above monetary agreement. The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order in the event that the tenants fail to abide by condition #2 of the above monetary agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord must bear the cost of the \$50.00 filing fee for this Application.

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: August 21, 2015

Residential Tenancy Branch

