



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF; MNSD, FF

Introduction

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

- a monetary order 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 and pet damage deposit ("deposits") in partial satisfaction of the monetary order requested, pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- authorization to obtain a return of the deposits, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, the tenant LR ("tenant") and the tenants' lawyer RS 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 tenants' lawyer confirmed that she had authority to represent and make submissions on behalf of both tenants at this hearing, including "tenant ML," the other tenant named in these applications.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord confirmed that she did not serve the tenants with a one-page printout of text messages as evidence for this hearing. The tenants' lawyer confirmed that the tenants did not receive a copy of this document. During the hearing, I advised the landlord that I could not consider her one-page text messages document at this hearing or in my decision because it was not served on the tenants, as required by Rule 3.1 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

Issues to be Decided

Is the landlord entitled to a monetary award 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' deposits in partial satisfaction of the monetary award requested?

Are the tenants entitled to a monetary award for the return of their deposits?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

Both parties agreed that this tenancy began on June 1, 2014 and ended on March 2, 2015. Monthly rent in the amount of \$1,650.00 was payable on the first day of each month. Both parties agreed that a security deposit of \$825.00 and a pet damage deposit of \$825.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was provided for this hearing. The landlord stated that a written forwarding address was provided by the tenants' lawyer in a letter, dated March 10, 2015, and received around March 11 or 12, 2015. The landlord filed her application on March 16, 2015. The landlord confirmed that move-in and move-out condition inspections and reports were prepared for this tenancy, while the tenants disputed this fact. The landlord confirmed that she did not have written permission from the tenants to retain any amount from their deposits.

The landlord seeks \$2,555.94 in damages, repairs and cleaning costs at the end of this tenancy, as well as to recover the \$50.00 filing fee. The tenants seek a return of both of their deposits, totalling \$1,650.00, plus the \$50.00 filing fee.

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 the 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 return \$825.00 from the tenants' deposits to the tenants' lawyer by way of certified cheque or money order to be sent by way of registered mail by August 31, 2015;
2. Both parties agreed that the landlord will retain \$825.00 from the tenants' deposits;
3. 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;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenants' application at this hearing and any issues arising out of this tenancy;
5. 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 testified that they understood that the settlement terms are legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy. The tenants' lawyer confirmed that she agreed with the above settlement on behalf of the other tenant ML.

Conclusion

To give effect to the settlement reached between the parties, I order the landlord to retain \$825.00 from the tenants' deposits.

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 tenants' favour in the amount of \$825.00. I deliver this Order to the tenants in support of the above agreement for use **only** in the event that the landlord fails to abide by condition #1 of the above monetary agreement. The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order in the event that the landlord fails to abide by condition #1 of the above monetary agreement. Should the landlord 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.

Both parties agreed to bear the cost of their own \$50.00 filing fee for their 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 27, 2015

Residential Tenancy Branch

