



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNR MNSD MNDC O FF – Landlords' Application
MNSD O – Tenant's Application

Introduction

This hearing commenced on August 14, 2015 for 62 minutes at which time the hearing time was about to expire. The Landlords were issued oral orders to return the Tenant's postdated cheques and to submit three additional pieces of evidence.

An Interim Decision was issued on August 17, 2015 which listed the aforementioned orders and these matters were adjourned to September 15, 2015 to hear the evidence relating to the Landlords' application. Accordingly, this Decision must be read in conjunction with my Interim Decision issued August 17, 2015.

A description of the additional evidence which the Landlords were to submit was listed on page 3 paragraph 4 of the Interim Decision as follows:

In this case I ordered the Landlords submit the following additional evidence to the Residential Tenancy Branch (RTB) and to the Tenant:

- 1) Copies of all tenancy agreements which the respondent Tenant signed;*
- 2) Copies of all condition inspection report forms the respondent Tenant signed; and*
- 3) Copies of the postdated cheques I ordered returned to the respondent Tenant.*

As per RTB Rule 3.19, no additional evidence may be submitted.

On August 26, 2015, 17 pages of evidence were received on file from the Landlords and included the following:

- 1) A copy of a six page tenancy agreement which the Tenant initialled and signed on July 20, 2014 plus a hand written document outlining six items discussed with the Tenant regarding care of the rental unit, strata fines, and parties;
- 2) A copy of a condition inspection report form the Tenant signed in the right hand column on page two beside sections P. Master Bedroom (1) and Q. Bedroom (2);
- 3) Copies of the Tenant's six postdated cheques dated from December 01, 2014 through to and including May 01, 2015;
- 4) A copy of a document titled "Cleaning Checklist; and

- 5) Three pages of emails sent between the Landlord(s) and Tenant.

Rule of Procedure 3.17 provides in part that the Arbitrator has the discretion to determine whether to accept documentary or digital evidence.

In this case the Landlords were issued clear orders regarding additional evidence they were to submit. Furthermore, the Interim Decision clearly states that no additional evidence may be submitted, pursuant to Rule 3.19. Accordingly, I will not be considering the evidence listed in items 4 and 5 above, as that evidence was not ordered to be submitted, pursuant to Rule of Procedure 3.17.

The Tenant confirmed receipt of his six postdated cheques along with copies of the Landlords' additional evidence, as listed above.

Issue(s) to be Decided

1. Has the Tenant proven entitlement to the return of double his security deposit?
2. Is the Tenant entitled to compensation for postdated cheques held by the Landlords?
3. Have the Landlords' proven entitlement to claim damages and cleaning of the rental unit against this Tenant?
4. Have the Landlords filed their claim for compensation or loss under the *Act*, regulation or tenancy agreement in accordance with the *Act*?

Background and Evidence

Undisputed Evidence

The Tenant's sister, S.V. initially occupied the rental unit as tenant based on a written tenancy agreement she entered into with the Landlords. S.V. paid a security deposit of \$700.00 to the Landlords at the outset of her tenancy. The respondent Tenant, T.V. moved into the rental unit as an occupant sometime after the start of S.V.'s tenancy.

A move in condition inspection was completed by the Landlords with S.V. and both parties signed the condition inspection report form on June 1, 2014.

S.V. moved out of the rental unit and on July 20, 2014 the respondent Tenant T.V. initialled and signed a written fixed term tenancy agreement that was scheduled to end on May 31, 2015. Rent of \$1,380.00 was required to be paid on or before the first of each month.

The parties mutually agreed that the \$700.00 security deposit that was being held by the Landlords would be transferred to T.V.'s tenancy, who is respondent to this dispute. T.V. would then settle the \$700.00 deposit paid by S.V. separately with S.V.

On or around July 20, 2014 the respondent Tenant signed S.V.'s move in condition report on the second page in the right hand column beside "Q – bedroom (2)" where the Landlords wrote "holes from screws to repair". This was done to represent the mutual agreement the parties entered into whereby the Tenant T.V. had agreed to fix the screw holes in that bedroom wall(s).

During the respondent Tenant's tenancy he took in a roommate named C.V. who resided in the rental unit as an occupant.

The respondent Tenant, T.V., stopped residing in the rental unit sometime around December 29, 2014. On January 5, 2015 the Landlord(s) and Tenant signed a Mutual Agreement to End Tenancy which ended the respondent Tenant's tenancy effective December 31, 2014 at 12 noon.

No move out inspection report was completed in the presence of the respondent Tenant on or before January 5, 2015, which is when the mutual agreement was signed.

The Tenant returned the rental unit keys to the Landlords on January 5, 2015. The Tenant made an oral request for the return his security deposit and his postdated cheques on January 5, 2015. The Landlords refused to return the deposit and the postdated cheques at that time.

On or around January 5, 2015 the Landlords entered into a new written fixed term tenancy agreement with the occupant, C.V. This new tenancy agreement was back dated to a start date of January 1, 2015 and was scheduled to end on January 31, 2015.

On January 15, 2015 the Landlords received a letter dated January 14, 2015 from the respondent Tenant. This letter was the respondent Tenant's written request for the return of his security deposit and included the Tenant's forwarding address.

The Tenant's Application

The Tenant submitted his application for Dispute Resolution on February 02, 2015 seeking \$2,100.00 monetary compensation which was comprised of: double his security deposit \$1,400.00 (2 x \$700.00); plus \$650.00 for breach of his privacy; and \$50.00 for the postdated cheques which were not returned by the Landlords.

The Tenant testified that he was no longer seeking the \$650.00 compensation for breach of privacy. Furthermore, the Tenant confirmed he would withdraw his request for \$50.00 if he received his postdated cheques from the Landlords as per orders issued in the previous hearing. During the September 15, 2015 hearing the Tenant confirmed receipt of his six postdated cheques returned from the Landlords.

The Tenant submitted that he wished to proceed with his application for the return of double his security deposit. He argued that the Landlords told him, in the presence of his sister, that he had left the rental unit in fair condition.

The Landlords argued that they had completed a walk through inspection of the rental unit on January 25, 2015 in absence of the Tenant. They asserted that they determined that the rental unit required some work and cleaning so they initially held onto the Tenant's postdated cheques in order to negotiate the security deposit.

The Landlords submitted that the Tenant abandoned his roommate C.V which left him homeless. The Landlords stated that they felt they had no choice but to agree to enter into a tenancy with C.V. and therefore the Tenant should still be held responsible for the rental unit.

The Landlords testified that they did not have the respondent Tenant's written permission to keep his security deposit; they did not have an Order issued by the Residential Tenancy Branch granting them authority to keep the deposit; and they did not file their application for Dispute Resolution to keep the deposit until February 4, 2015.

Landlords Application

During the September 15, 2015 hearing I explained to the parties that I would not hear the Landlord's claim for compensation for damages and cleaning of the rental unit filed against the respondent Tenant. I refused to hear those claims in part, because the Landlords' evidence was based on an inspection that was conducted several weeks after this Tenant's tenancy had ended and several weeks after the subsequent tenant had legal possession of the rental unit.

I explained that the respondent Tenant's legal obligation had ended on December 31, 2014, several weeks prior to the Landlords conducting their inspection. The resulting damages or cleaning requirement could have been created by the subsequent tenant who had legal possession of the rental unit for several weeks by the time the inspection was conducted.

The Landlords stated that their application listed other items against the Tenant which included, in part, claims for strata fees, NSF fees, and other items. The Landlords filed their first application on February 04, 2015 listing a claim amount of \$1,905.00.

Corrections were required to be made to the Landlords' application for Dispute Resolution and it was returned to the Landlords on February 04, 2015. On February 13, 2015 the amended or corrected application was stamped received at the RTB. The amended application also listed a monetary claim of \$1,905.00. In the Details of Dispute the Landlords wrote a brief description of chronological events listed by date.

On February 16, 2015 the Landlords submitted 56 pages of evidence which included 15 photographs, a Monetary Order Worksheet listing a total claim amount of \$3,052.00; and

various other documents. The evidence was compiled with some documents stapled in unlabelled groups and none of the evidence had page numbers written on them.

During the September 15, 2015 hearing the Landlords were given leave to present their claim against the Tenant totalling \$1,905.00 which did not relate to damages or cleaning, as stated above.

When I asked the Landlords what the \$1,905.00 was comprised of the Landlords spent eleven minutes trying to determine what that amount included. After a brief discussion the Landlords referenced a hand written document which had been submitted with their initial application on February 04, 2015 which was titled "Monetary Form Page 1" and "Page 2". This two page document listed several items and dollar amounts; however, there was no total amount listed. When I added the dollar amounts listed on this document I reached a total of \$2,055.00 not \$1,905.00.

The Landlords began to submit their evidence in relation to the items on this document and stated that the first item was for NSF fees for the October rent payment. When I asked what dollar amount they were claiming for this item the Landlords began to fumble through their evidence again.

After approximately four minutes the Landlords stated they were seeking \$100.00 and then they changed their submission arguing that they had attempted to deposit the October cheque five times. I then asked for clarification of the dollar amount being claimed for this NSF cheque and the Landlords stated \$1,000.00.

After consideration of the foregoing, I determined that the Landlords had not submitted a clear description of the amounts being claimed on their application for Dispute Resolution and their evidence had not been submitted in an organized fashion that would allow me, the Landlords or the respondent to find documents the Landlords were referencing. As such the Landlords were not adequately prepared to present their evidence in support of each item claimed, as required by the *Act*.

In addition to the foregoing, I determined that given the lack of a clear description of the Landlords' monetary claim, the Tenant would not have been able to adequately prepare his response or defence in advance of the hearing, as he would not have had clear understanding of the items or amounts being claimed.

As per the foregoing, I informed the parties that I would not be proceeding to hear submissions relating to the Landlords' application and it will be dismissed, with leave to reapply.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Rules of Procedure stipulate provisions relating to these matters as follows:

Regarding End Date of Tenancy

Section 44(1)(c) of the *Act* stipulates in part, that a tenancy ends on the effective date the landlord and tenant agree in writing to end the tenancy.

Regarding Disbursement of the Security Deposit

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest, or make application for dispute resolution claiming against the security deposit.

Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Regarding Monetary Awards

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Regarding Filing an Application and Evidence

Section 59(2) of the *Act* stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

Residential Tenancy Branch Rule of Procedure 2.11 provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant must submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application along with a detailed or itemized list of the changes.

Residential Tenancy Branch Rules of Procedure 3.7 stipulates in part that to ensure a fair, efficient and effective process, an identical package of documents and photographs, which are identified in the same manner and are placed in the same order, must be served on each Respondent and submitted to the Residential Tenancy Branch. To ensure fairness and efficiency, an Arbitrator has the discretion to not consider evidence if the Arbitrator determines it is not readily identifiable, organized, clear and legible.

Section 59(5) of the *Act* provides that the director may refuse to accept an application for dispute resolution if

- (a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,
- (b) the applicant owes outstanding fees under this Act to the government, or
- (c) the application does not comply with subsection (2).

Regarding the Filing Fee

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Tenant's Application

The undisputed evidence is the tenancy ended effective December 31, 2014 by written mutual agreement, in accordance with section 44(1)(c) of the *Act* and the Landlords received the Tenant's forwarding address in writing on January 15, 2015. Therefore, the Landlords were required to return the security deposit in full or file for dispute resolution no later than January 30, 2015. The Landlords did not return the security deposit and they did not file their application until February 4, 2015 which is five days after the required timeframe.

As per the foregoing, I conclude that the Landlords have failed to comply with Section 38(1) of the *Act*. Accordingly, the Landlords are now subject to section 38(6) of the *Act* and are required to pay the Tenant double the security deposit.

Based on the above, I find that the Tenant has succeeded in proving the merits of their application and I award him double his security deposit 2 x \$700.00 plus interest of \$0.00 for a total award of **\$1,400.00**, pursuant to section 67 of the *Act*.

The Tenant withdrew his requests for compensation for breach of privacy and for the failure to return his postdated cheques, as those cheques have since been returned.

The Tenant has succeeded with his application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Landlord's Application

As discussed during the hearing, I concluded that the Landlords had not submitted their application with a clear description of the amounts and items being claimed, as required by section 59(2)(b) of the *Act*.

The Landlords attempted to increase their claim amount from \$1,905.00 to \$3,052.00 by submitting a monetary order worksheet into evidence. The Landlords did not complete, file, or serve an amended application as required by Rule of Procedure 2.11.

In addition, the Landlords evidence was not submitted in an organized fashion that would accommodate an efficient and effective process as stipulated in Rule of Procedure 3.7.

Based on the above, I declined to hear the Landlords' application and it was dismissed, with leave to reapply, pursuant to section 59(5) of the *Act*.

Conclusion

The Tenant was successful with his application and was awarded \$1,400.00 plus recovery of his \$50.00 filing fee.

The Tenant has been issued a Monetary Order for **\$1,450.00** (\$1,400.0 + \$50.00). This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with Small Claims Court and enforced as an Order of that Court.

The Landlords' application was 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: September 17, 2015

