



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

- a monetary order 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 tenants' agent, MR and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants' agent confirmed that she had authority to represent both tenants named in this application at this hearing. The tenants provided written confirmation that their agent had authority to represent them at this hearing. This hearing lasted approximately 79 minutes in order to allow both parties to fully present their submissions.

The tenants' agent 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 both tenants were duly served with the landlord's Application.

The tenants' agent confirmed that she served the landlord with 4 pages of written evidence on August 25, 2015. The tenants' agent did not provide proof of service. The tenants' agent stated that she did not intend to rely on this evidence at this hearing. During the hearing, I advised both parties that I would not consider this evidence at this hearing, as the tenants were unable to provide proof of service.

The landlord confirmed that she provided the tenants with a copy of the interim decision, dated September 11, 2015, made by another Arbitrator of the Residential Tenancy Branch ("RTB"), by way of regular mail on September 30, 2015. The decision dismissed the tenants' application, as the tenants did not appear at the hearing. Although the landlord did not appear at the hearing, the Arbitrator granted the landlord's request for an adjournment of her hearing. The tenants' agent confirmed that she did not receive a copy of the interim decision, only the notice to attend this hearing. The tenants' agent confirmed that she was aware that this hearing was only to deal with the landlord's claims and not the tenants' claims. Accordingly, I advised both parties that the tenants' application had been dismissed by the previous Arbitrator, the file number of which appears on the front page of this decision, and that this hearing would proceed only on the landlord's claims.

Issues to be Decided

Is the landlord entitled to a monetary award 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

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties confirmed that this tenancy began on March 1, 2015 and ended on July 31, 2015. Monthly rent of \$1,175.00 was payable on the first day of each month. A security deposit of \$587.50 was paid by the tenants and the landlord continues to retain this deposit. Both parties agreed that no move-in or move-out condition inspection reports were completed for this tenancy.

The landlord confirmed that she had the tenants' written forwarding address, which is an employment address, since the beginning of this tenancy. She said it was provided by the tenants to another Arbitrator at a previous RTB hearing, in order to mail the tenants' copy of the Arbitrator's decision there. The landlord explained that she mailed her Application to the tenants at that same address. The landlord confirmed that she did

not have written permission from the tenants to keep any amount from their security deposit and that she filed her Application to retain it on August 9, 2015.

The landlord seeks to retain the tenants' entire security deposit of \$587.50 because the tenants interfered with her ability to show the rental unit to prospective tenants. The landlord claimed that she provided the tenants with the required 24 hours' notice of showings at the rental unit. She stated that between July 17 and 30, 2015, the tenants left RTB forms and notices, as well as letters between the parties posted all over the rental unit and then piled on a table. The landlord provided photographs of these displays.

The landlord confirmed that the tenants had a guest sleeping on the mattress of the living room floor, when they were aware that the landlord would be having a showing one day. The landlord maintained that the tenants left the rental unit in a messy state with large piles of empty cans and bottles all over the rental unit. The landlord explained that the tenants claimed to have cameras set up all over the rental unit to determine if the landlord was entering the unit without the tenants present. The landlord stated that the tenants posted a note on their front door asking for the landlord to call them before showing the unit and advising her that she could not enter the unit without the tenants being present. The landlord submitted that these actions were embarrassing, they elicited a negative and uncomfortable response from prospective tenants, she was asked questions and had to explain the situation and she lost prospective tenants from renting the unit. The landlord stated that she had showings between August 1 and 19, 2015, that she was away between August 19 and September 30 and that she was unable to re-rent the unit until October 2015.

The tenants dispute the landlord's claim to retain their security deposit, stating that the landlord did not suffer any loss. The tenants maintained that they posted RTB documents around the rental unit on July 17, 2015, in order to determine whether the landlord tried to enter their rental unit without them being present. The landlord confirmed that she wrote a note for the tenants to remove these documents. The tenants claimed that they realized their mistake and took down these documents immediately and they were posted for less than 24 hours. The tenants' agent confirmed that the documents were left on the table between July 21 and 22, 2015, after they were taken down and that they were no longer on the table between July 24 and 30, 2015.

The tenants' agent submitted that the tenants had a family member arriving on a late 1:00 a.m. flight one night and they had her sleep on a mattress in the living room. The tenants claimed that they left a note for the landlord to call them 15 minutes before the showing because a family member was staying with them. The tenants explained that

they did not prevent the landlord from entering their unit, as the landlord still showed the unit to prospective tenants. The tenants' agent confirmed that the tenants were away from July 24 to 29, 2015 as she picked them up and took them to a cottage during this time, and there was no note left on the front door while they were away. The tenants claimed that the landlord put a note on their belongings telling them not to touch things and that she removed their cables and tampered with their belongings. The landlord confirmed that she left notes for the tenants to remind them not to remove her belongings from the rental unit when they vacated.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and show efforts to minimize this loss. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants caused her a loss.

In summary, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim for \$587.50 without leave to reapply. I find that the landlord did not provide sufficient evidence to show that she suffered an actual monetary loss due to the tenants' actions. Although I find that the tenants left RTB documents and other paperwork posted around the rental unit, the tenants took action immediately to correct their actions. Although the paperwork was later left on a table, I find that the landlord did not provide sufficient evidence of a loss. The paperwork could have consisted of any number of documents, which the prospective tenants, walking through the rental unit, would have had to sift through and carefully read to see what the documents were about. The landlord did not provide any testimony or statements from

prospective tenants or other witnesses, demonstrating that the tenants' actions caused them not to rent the unit from the landlord. The landlord did not show how she arrived at the monetary amount of \$587.50 for her loss. The landlord had other factors which delayed her ability to re-rent the unit, such as her personal illness and traveling out of town. I find that the landlord failed to meet the four-part damages test above.

I order the landlord to return the tenants' entire security deposit of \$587.50 to the tenants. I find that the tenants are not entitled to double the value of their security deposit. Although the landlord's right to claim against the deposit for damages was extinguished for failure to complete move-in and move-out condition inspection reports, the landlord did not claim for damages at this hearing. The landlord filed her application to retain the deposit for other losses, within the 15 day time period after the end of this tenancy, as per section 38 of the Act.

As the landlord was unsuccessful in her Application, I find that she is not entitled to recover the \$50.00 filing fee paid for this Application.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$587.50 against the landlord, for the return of the security deposit. The landlord must be served with this Order as soon as possible. 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.

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: December 14, 2015

Residential Tenancy Branch

