



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC MNSD FF

For the landlords: MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The tenant applied for a monetary order for the return of double her security deposit, for two months of compensation due to the landlord not complying with the reason as stated in the 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”), and to recover the cost of the filing fee. The landlords applied for a monetary order in the amount of \$3,400.00 due to the tenant not complying with a verbal agreement related to “looking after the horses feet”, and to recover the cost of the filing fee.

The landlords and the tenant attended the teleconference hearing as scheduled. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither party raised any concerns regarding the service of documentary evidence or the Application for Dispute Resolution.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit under the *Act*?

- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on July 15, 2013 and ended on February 28, 2015 when the tenant vacated the rental unit. Monthly rent in the amount of \$1,300.00 was due on the fifteenth day of each month. A security deposit of \$650.00 was paid by the tenant at the start of the tenancy, which the landlords continue to hold.

The tenant is seeking the return of double their security deposit of \$650.00 for a total \$1,300.00; plus \$2,600.00 for two months of compensation due to the landlords not complying with the reason as stated in the 2 Month Notice dated January 12, 2015; plus \$120.00 for excess hydro due to running fans and pumps in the rental unit . The landlords are seeking a monetary amount of \$3,400.00 due to the tenant not complying with a verbal agreement related to “looking after the horses feet”.

Evidence related to Landlords’ claim:

Regarding the landlords’ claim, the parties dispute that a verbal agreement was made regarding the tenant “looking after the horses feet” on the rental property. The landlords confirmed that there was no written agreement between the parties to support the landlords’ claim.

Evidence related to Tenant’s claim:

The parties agreed that the landlord did not complete an incoming or outgoing condition inspection report during the tenancy. In addition, the landlords confirmed that they placed a “stop payment” on the security deposit cheque they had mailed to the tenant. There is no dispute that the tenant has never received her security deposit from the landlords since her written forwarding address was provided on February 18, 2015, which the landlords confirmed was received in writing from the tenant. Both parties also confirmed that the tenant has not signed over any portion of her security deposit to the landlords.

In addition, the landlords confirmed that they did not use the rental unit for the reason stated on the 2 Month Notice dated January 12, 2015 for a minimum of six months as required by the *Act*.

Settlement Agreement

During the hearing, the parties mutually agreed pursuant to section 63 of the *Act* that the landlords would compensate the tenant \$120.00 for excess hydro paid by the tenant related to fans and pumps in the rental unit. The landlords testified that they were not disputing this portion of the tenant's application.

Analysis

Based on the documentary evidence, testimony, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

Landlords' claim – There is no dispute that the landlords' claim relates to a disputed verbal agreement between the parties. As a result, I find the landlords have failed to meet the burden of proof as both parties disputed a verbal agreement and the landlords have the burden of proof as they have applied for monetary compensation in the amount of \$3,400.00. As a result, **I dismiss** the landlords' application in full, **without leave to reapply** due to insufficient evidence.

Tenant's claim for double her security deposit – Section 38 of the *Act*, requires that the landlords must return or make a claim against the security deposit within 15 days of the later of the end of tenancy date and the date the written forwarding address is provided by the tenant to the landlord. The tenancy ended on February 28, 2015. The parties agreed that the landlords had received the tenant's written forwarding address on February 18, 2015. The landlords have not claimed towards the tenant's security deposit and confirmed that they placed a stop payment on the security deposit cheque

mailed to the tenant. Therefore, I find the landlords failed to comply with section 38 of the *Act* by failing to return the tenant's security deposit in full within 15 days of the later date before me, which was February 28, 2015. I also note that the landlords had already extinguished their right to claim towards the tenant's security deposit by failing to complete an incoming and outgoing condition inspection report which is addressed in sections 23, 24, 35, and 36 of the *Act*. As a result, I find the tenant is entitled to the return of double their original security deposit under the *Act* in the amount of **\$1,300.00**.

Tenant's claim for double the monthly rent – There is no dispute that the landlords did not use the rental unit for the reason as stated in the 2 Month Notice for a minimum of six months after issuing the 2 Month Notice dated January 12, 2015. Section 51(2) of the *Act* applies and states:

Tenant's compensation: section 49 notice

**51 (2) In addition to the amount payable under subsection (1),
if**

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice,
or

(b) **the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,**

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[my emphasis added]

Given the above, I find the landlords must pay the tenant **\$2,600.00**, which is double the amount of monthly rent for not using the rental unit for the stated purpose listed on the 2 Month Notice for at least six months pursuant to section 51(2) of the *Act*.

Tenant's claim for \$120.00 for excess hydro costs – As indicated above, the parties reached a settlement agreement pursuant to section 63 of the *Act* as this portion of the

tenant's claim was not disputed by the landlords. As a result, the tenant is owed **\$120.00** for this portion of her monetary claim.

As the landlords' claim did not have merit, I do not grant the landlords the recovery of the cost of the filing fee.

As the tenant's claim did have merit, **I grant** the tenant the recovery of the cost of the filing fee in the amount of **\$50.00**.

The landlords continue to hold the tenant's security deposit of \$650.00, which has accrued no interest since the start of the tenancy. I find that the tenant has established a total monetary claim of **\$4,070.00** comprised of \$1,300.00 for the doubled security deposit, \$2,600.00 for double the monthly rent, \$120.00 for excess hydro, plus recovery of the \$50.00 filing fee.

Conclusion

The landlords' application is dismissed.

The tenant's application is successful.

The tenant has established a total monetary claim of \$4,070.00 as indicated above. The tenant has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$4,070.00 which must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 25, 2016

Residential Tenancy Branch

