



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on July 30, 2015. The Landlords filed seeking a Monetary Order to retain the security deposit; for money owed or compensation for damage or loss under the *Act*, Regulation and/or the tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by both Landlords and the Tenant. The male Landlord submitted the oral evidence on behalf of both Landlords. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On July 30, 2015 the Landlords submitted 9 pages of evidence to the Residential Tenancy Branch (RTB). On January 08, 2016 the Landlords submitted two additional pages which were comprised of a cover sheet and Canada Post Receipts. The Landlord affirmed that they served the Tenant with copies of the same documents that they had served the RTB, excluding the copy of the Canada Post receipt. The Tenant acknowledged receipt of those documents and no issues regarding service or receipt were raised. As such, I accepted the Landlords' submissions as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Landlords proven entitlement to retain the security deposit?

Background and Evidence

The parties entered into a written month to month tenancy agreement that began on August 23, 2014. Rent of \$900.00 was payable on or before the first of each month. On August 23, 2014 the Tenant paid \$450.00 as the security deposit. A move in condition inspection report form was completed in the presence of both parties on or before August 23, 2014.

On June 14, 2015 the Tenant sent the Landlords an email advising that she would be ending her tenancy effective July 15, 2015. The Landlords responded to that email stating "July 15th is fine with us".

The Landlord testified that when they picked up the July 1, 2015 rent they had verbally arranged to meet the Tenant on July 15th, 2015 after she finished work, to conduct the move out inspection and recover the keys. The Landlord asserted that when they had not heard from the Tenant on July 15, 2015 they attempted to contact her.

The Landlords submitted that the Tenant responded to their email requests on July 15, 2015 stating that she would not meet them at the rental unit and if they wished the keys returned they could pick them up from her new residence. The Landlord said he attended the Tenant's new residence at which time she failed to return all of the keys.

On August 1, 2015 the Landlords had another email exchange with the Tenant regarding the deposit and inspection. Then on August 4, 2015 they agreed, through email, to meet the Tenant at the rental unit on August 7, 2015 at 2:00 p.m. to conduct the move out inspection and deal with the return of the security deposit. The Landlord submitted that at 11:30 a.m. on August 7, 2015 they received another email from the Tenant stating that she would not be able to attend the rental unit at 2:00 p.m. as planned. They argued that they responded by asking if there was a different time that would work and the Tenant declined to offer an alternative.

The Tenant testified that she did not have a pre-set date or time scheduled to conduct the move out walk through. She confirmed that there were email exchanges between her and the Landlords on July 15, 2015 about attending the inspection; however, she argued those emails were at 10:00 p.m. and 11:30 p.m. which was too late for her to attend an inspection.

The Tenant confirmed that she had requested the Landlords pick up the keys from her new residence. She also confirmed that she did not return all of the keys as she could not find one of the main entrance keys. She argued that the main entrance keys cost

only \$50.00 and that she agreed that the Landlord could deduct the \$50.00 from her security deposit.

The Tenant submitted that the Landlords had been away camping and they were trying to reschedule a time when they could meet at the rental unit and conduct the move out inspection. She confirmed that it was scheduled to take place on August 7, 2015 at 2:00 p.m. and she cancelled that meeting at 11:30 that morning. The Tenant stated that she did not offer another time or date when she could attend the rental unit.

In closing, the Landlord argued that he was up against a deadline to serve his application so he could not continue to keep scheduling appointments for the Tenant only to have her cancel them. They wished to proceed with their request to keep the security deposit as the Tenant failed to attend the move out inspection.

Analysis

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.

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

In this case the Tenant emailed the Landlords advising that she wished to end her tenancy effective July 15, 2015. The Landlords responded stating that was fine with them. Accordingly, I find the parties mutually agreed to end this tenancy effective July 15, 2015.

Section 36(1) of the *Act* provides, in part, that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and the tenant has not participated on either occasion.

Section 37 of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and return all of the keys that allow access to and within the rental unit.

In this case I favored the Landlords' evidence over the Tenant's that the parties had agreed to meet at the rental unit on July 15, 2015, after work, to conduct the move out inspection and return the keys. I favored the Landlord's submission because it was forthright, credible, and followed up by his emails sent on July 15, 2015.

In addition to the above, the undisputed evidence was the parties agreed to a second date and time to meet at the unit. That August 7, 2015 2:00 p.m. meeting was the second inspection opportunity that the Tenant did not attend. At no time did the Tenant offer an alternative date or time to conduct the inspection.

Based on the above, I find the Landlords acted accordingly, within the 15 day required time frame set out in section 38 of the *Act*, by filing their application for Dispute Resolution on July 30, 2015. I further find that the Landlords took additional steps to mitigate any losses by agreeing to meet with the Tenant even after they had filed their application for Dispute Resolution.

Based on the totality of the events described to me during the hearing I find the Tenant extinguished her right to the return of her security deposit, pursuant to section 36(1) of the *Act*. Accordingly, I grant the Landlords' application to retain the **\$450.00** security deposit. Given the short amount of time the security deposit had been held in trust by the Landlords no interest had accrued on that deposit.

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.

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

The total award granted to the Landlords is \$500.00 which is \$50.00 more than the security deposit. Therefore, I order the Tenant to pay the Landlords the balance of due of \$50.00.

In the event the Tenant does not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$50.00**. The Order must be served upon the Tenant and may be enforced through Small Claims Court.

Conclusion

The Landlords were successful with their application and were granted the authority to retain the Tenant's \$450.00 security deposit and recover their \$50.00 filing fee.

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: January 27, 2016

Residential Tenancy Branch

