



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNDC MNSD FF
For the landlord: MND MNSD 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 tenants applied for a monetary order for the return of double their security deposit, for the equivalent of one month’s rent due to the landlord serving the tenants with a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”) dated May 8, 2015 and to recover the cost of the filing fee. The landlord applied for a monetary order for damages to the rental unit, site or property, for authorization to retain the tenants’ security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord and tenants attended the teleconference hearing as scheduled which began on November 27, 2015 and was adjourned to provide additional time to hear the evidence of both parties. An Interim Decision was issued dated November 27, 2015 which should be read in conjunction with this Decision. On January 27, 2016, the hearing reconvened and concluded.

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 tenants' 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 September 30, 2014 and ended on August 2, 2015 when the tenants vacated the rental unit. Monthly rent in the amount of \$1,200.00 was due on the first day of each month. A security deposit of \$500.00 was paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The tenants is seeking the return of double their security deposit of \$500.00 for a total \$1,000.00; plus \$1,200.00 for the equivalent of one month of rent due to the landlord serving them a 2 Month Notice, plus \$550.00 for moving costs. The landlord is seeking a monetary amount of \$10,184.00 for damages to the rental unit and cleaning costs.

Evidence related to Landlord's claim:

Regarding the landlord's claim, the landlord and tenants agreed that the landlord did not complete an incoming or outgoing condition inspection report at the start or at the end of the tenancy. In addition the landlord did not submit any photos to support his claim. The tenants did not agree to any portion of the landlord's claim and stated under oath that they cleaned the rental unit before they moved out. The tenants testified that they took several loads of garbage. For garbage costs, the landlord has claimed \$60.00 for six \$10.00 loads and did not submit a receipt in evidence.

Regarding the carpets, the landlord has claimed \$3,400.00 plus \$870.00 in labour to replace the carpets; however, the landlord testified that he was unsure of the age of the carpets.

Regarding the walls and painting portion of the landlord's claim for \$1,800.00 the landlord testified that he was unsure of the age of the interior paint.

Regarding the kitchen cabinets, the landlord has claimed \$1,850.00 and confirmed that he was unsure of the age of the cabinets.

The next portion of the landlord's claim related to plumbing costs of \$450.00 and confirmed that he was unsure of the age of the plumbing in the rental unit.

Regarding the shed replacement that the landlord has claimed \$1,000.00 to replace, the tenants denied damaging the shed and said they only lived in the rental unit for nine months and that the shed was in poor condition when they lived there. The landlord confirmed that he was unsure of the age of the shed and that he did not provide any quotes or photos of the shed in support of his claim.

Evidence related to Tenants' claim:

The landlord confirmed that he issued the tenants a 2 Month Notice and has not provided the required compensation which is the equivalent of one month of rent to the tenants pursuant to section 49 of the *Act*.

Regarding the tenants' security deposit, the landlord confirmed that he received the tenants' written forwarding address on August 2, 2015 and did not file for arbitration claiming towards their security deposit until October 14, 2015.

The tenants were advised that their claim for moving costs was being dismissed as there is no remedy under the *Act* for such costs based on the details of their claim before me.

Analysis

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

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*.

Landlord's claim – Firstly, the landlord breached sections 23, 24, 35 and 36 of the *Act* by failing to complete the incoming and outgoing condition inspection reports. Secondly, the landlord failed to meet the burden of proof for his entire claim as the landlord was unable to provide the age of the carpets, kitchen cabinets, interior paint, plumbing and shed which means it is just as likely that all items had already passed their useful life as defined in *Residential Tenancy Branch Policy Guideline 40 – Useful Life of Building Elements*. In addition, the landlord failed to provide photos which could have assisted in determining what the condition of the items were at the start of the tenancy, compared

to the condition at the end of the tenancy. As a result, **I dismiss** the landlord's claim in full due to insufficient evidence, **without leave to reapply**.

Tenants' claim for double their security deposit – Section 38 of the *Act*, requires that the landlord 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 tenants to the landlord. The tenancy ended on August 2, 2015. The parties agreed that the landlord had received the tenants' written forwarding address on August 2, 2015. The landlord did not file his claim until October 14, 2015 which is well beyond the 15 day timeline provided under section 38 of the *Act*. In addition, the landlord had already extinguished his right to claim against the tenants' security deposit by failing to complete and incoming and outgoing condition inspection report as per section 24 and 36 of the *Act*.

Therefore, I find the landlord failed to comply with section 38 of the *Act* by failing to return the tenants security deposit in full within 15 days of August 2, 2015. As a result, I find the tenants are entitled to the return of double their original security deposit under the *Act* in the amount of **\$1,000.00**.

Tenants' claim for compensation based on the 2 Month Notice - There is no dispute that the landlord served the tenants with a 2 Month Notice dated May 8, 2015. The landlord confirmed that he has not provided the tenants with the required compensation, which is the equivalent of one month's rent pursuant to section 49 of the *Act*. Given the above, I find the tenants are entitled to **\$1,200.00** for having been issued a 2 Month Notice under the *Act*.

As the tenants' claim had merit, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$50.00**. The tenants' total monetary claim established is **\$2,250.00**. I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$2,250.00.

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

Conclusion

The landlord's application is dismissed.

The tenants' application is mostly successful.

The tenants have established a total monetary claim of \$2,250.00 as indicated above. The tenants have been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$2,250.00 which must be served on the landlord 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: February 15, 2016

Residential Tenancy Branch

