



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act, regulations or tenancy agreement, for the return of the double the Tenants' security deposit and to recover the filing fee for this proceeding.

The original hearing for this dispute was held on December 1, 2015 and the Tenants were awarded a monetary order for \$3,109.08. Following that hearing the Landlord filed a review consideration request and was successful in obtaining a new hearing on the grounds that the Tenants did not serve the Landlord as required by the Act and as a result the Landlord was unable to attend the hearing. The Tenants said in the first hearing that they serviced the Landlord in person directly by hand on June 27, 2015. The Landlord's review consideration said he was not served in person by hand by the Tenants. The Landlord was granted a review hearing scheduled today February 22, 2016 at 9:00 p.m. During the preliminary matters discussion at this hearing the Tenants said they actually serviced a minor person at the Landlord's home address. The Tenants said they did not know about the serve requirements. The Landlord said he did not receive the Tenants' hearing package. Further the Landlord said he subsequently received the Tenants' hearing package by registered mail on February 1, 2016 and he has reviewed the documents.

The Tenant said they served the Landlord for the second hearing with the Application and Notice of Hearing (the "hearing package") by registered mail on February 1, 2016. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package and both parties were prepared to go ahead with the hearing.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation and if so how much?
2. Are the Tenants entitled to the return of double the security deposit?

Background and Evidence

This tenancy started in November 8, 2014 as a fixed term tenancy with an expiry date of November 30, 2015. Rent is \$3,000.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,500.00 at the start of the tenancy. At the start of the hearing the Tenants denied a move in condition inspection report was completed, but

when the Landlord gave testimony and presented the move in and move out condition inspection reports dated November 8, 2014 and April 26, 2015 with the Tenants' signature on it the Tenants agreed the reports were completed. The move in report was dated November 8, 2014 and the move out was dated April 26, 2015. The Landlord said the Tenants' testimony has not been consistent and in some cases wrong. The Arbitrator made note of the Landlord's comment and told the Tenants they were giving affirmed testimony and therefore their testimony should have full disclosure and be accurate. The Tenants agreed.

The Tenants said they gave the Landlord notice they were moving out of the rental unit in early February, 2015 and they moved out on April 26, 2015. The Tenants understood this was a breach of their tenancy agreement as the expiry dated of the tenancy agreement was November 30, 2015. The Tenants continued to say they tried to find another tenant to take over the tenancy, but they said the Landlord was not cooperating so they moved out without a new tenant in the rental unit. At the move out inspection the Tenant said they gave the Landlord their forwarding address and then in May, 2015 the Tenants requested the Landlord to return their security deposit. The Tenant said because the Landlord did not return the security deposit they are applying for double the deposit in the amount of \$3,000.00.

The Landlord said the move out condition inspection report says the Tenants agree to the Landlord retaining \$250.00 for carpet cleaning and \$1,250.00 for leaving the tenancy early. The Landlord said this was the agreement therefore he does not understand why the Tenants made this application. The Landlord said the move out condition inspection report dated April 26, 2015 and signed by the Tenants authorizes him to retain the Tenants' security deposit.

The Tenants said they agreed to the carpet cleaning of \$250.00 but the Landlord wrote in the addition amount of \$1,250.00 for breaking the tenancy agreement after the inspection was completed. The Tenants said they would not have agreed to that. As well the Tenants said the Landlord did not give them a copy of the report so the only report available for the hearing is the Landlord's copy which was changed.

The Landlord said he gave the Tenant's a copy of the condition inspection reports on April 26, 2015. As well the Landlord said he did not change the report. The Landlord said the Tenants' agreed that he could retain the security deposit for carpet cleaning and for breaking the tenancy agreement before the expiry dated of November 30, 2015.

Further the Tenants said they are requesting \$59.08 from the Landlord as a reimbursement for utilities as per the agreement on utilities in the tenancy agreement.

The Landlord said he is not disputing this claim of \$59.08 for the utilities used by the downstairs tenants.

The Tenants continued to say they are also claiming \$27.13 for paint touch ups in the rental unit. The male Tenant said he had agreed to do this at his expense as a good will gesture, but now he is claim the paint costs.

The Landlord said there was no agreement about touch up painting and this was the Tenants' responsibility.

Further the Tenant said they are claiming the cost of a shower curtain in the amount of \$33.53 that was left in the unit as no curtain was supplied with the rental unit. The previous decision

indicated there was no agreement on leaving the shower curtain so the Tenants could have taken the curtain with them if they chose to.

The Landlord said there was no agreement on the shower curtain.

In closing the Landlord said he does not agree with the Tenants' application as they agreed to the Landlord retaining their security deposit on the move out condition report and there were no agreements on the paint or shower curtain. The Landlord said he has no problem reimbursing the Tenants for the utilities.

The Tenants said in closing that they understood they broke the tenancy agreement but they did not agree to give up \$1,250.00 of their security deposit for leaving early. The Tenants said they believed the Landlord was keeping their deposit to profit from them.

Analysis

I have reviewed the testimony given at the review hearing, the evidence in the Tenants' application and the evidence in the Landlord's review consideration application. The evidence I reviewed included the condition inspection reports dated November 8, 2014 and April 26, 2015.

The Tenants say they did not receive a copy of the move out condition inspection report on the move out day or within 15 days of the tenancy ending. The Tenant said they move out report submitted by the Landlord was changed to include the Landlord retaining \$1,250.00 for ending the tenancy early. The Tenants have not submitted corroborative evidence to prove the condition inspection report was changed except for their testimony. As well the Tenants said they agreed to the deduction of \$250.00 for carpet cleaning on the report but not the \$1,250.00 for ending the tenancy early.

The Landlord said he gave the Tenants a copy of the condition inspection reports on April 26, 2015 at the move out meeting. The Landlord said the Tenants have not submitting their copy of the report to show any changes have been made, so it is the Landlord's contention is that the report was not changed and that is why the Tenants did not submit their copy of the move out condition inspection report. The Landlord said the Tenants testimony has been questionable already and this is another instance when it is not correct.

I accept the Landlord's statement that the Tenants misrepresented the facts with regard to the original service of documents to the Landlord and during this hearing when the Tenants said a move in report was not completed when it was completed and signed by the Tenants on November 8, 2014. As well the Tenants had a copy of this report in front of them and still told the Arbitrator no report was completed. The burden of proving a claim lies with the applicants and when it is just the applicants' word against that of the respondent that burden of proof is not met. I accept the Landlord's testimony and evidence that the condition inspection report submitted was completed as submitted on April 26, 2015. Consequently the Tenants signed the report agreeing that the Landlord could retain \$250.00 for carpet cleaning and \$1,250.00 as compensation for ending the tenancy early. I dismiss the Tenants' claim for the return of their

security deposit of \$1,500.00 and for their application for the return of double the security deposit of \$3,000.00 as the condition inspection report clearly says it was agreed the Landlord will retain the Tenants' security deposit and the report is completed correctly and signed by both the Tenants and the Landlord.

Further I dismiss both the Tenant's claims for paint touch ups and the cost of the shower curtain as the Tenant has not submitted any corroborative evidence that support an agreement with the Landlord regarding either of these items. These claims are dismissed due to lack of evidence.

The Landlord said he is not disputing the Tenants claim for reimbursement of the utilities in the amount of \$58.08; therefore I order the Landlord to pay the Tenants \$58.08 forthwith.

As the Tenants have only been partially successful in this matter I order the Tenants to bear the cost of the filing fee of \$50.00 that they have already paid.

Conclusion

I order the Landlord to pay the Tenants \$58.08 forthwith.

The Tenants application for the return of double the security deposit, for paint touch ups and for the cost of the shower curtain are dismissed without 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: February 22, 2016

Residential Tenancy Branch

