



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF, O
 MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties also provided evidentiary material in advance of the hearing, and were given the opportunity to question each other with respect to the evidence and testimony provided. No issues with respect to service or delivery of evidence were raised, and all evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlord for return of all or part of the security deposit?

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for double return of the security deposit?

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2014 and ended at the end of September, 2015. Rent in the amount of \$1,300.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$650.00. The rental unit is a single family dwelling, and the landlord resides in a house next door.

The landlord further testified that on August 31, 2015 the tenants posted to the landlord's door a notice to end the tenancy effective September 31, 2015, which doesn't exist. The landlord received the notice on August 31, 2015, but since it was posted to the door, the tenants didn't provide 3 days for service as required. Further, there's no such date as September 31, and the landlord claims an additional month of rent from the tenants, or \$1,300.00 for not giving the landlord sufficient notice. The rental unit was re-rented for November 1, 2015, and the landlord testified that he was probably too busy to get it rented sooner.

The landlord sent to the forwarding address provided by the tenants in their notice to end the tenancy a cheque in the amount of \$650.00 on October 9, 2015 by registered mail as return of the security deposit. A copy of the envelope has been provided, as well as a copy of a Canada Post cash register receipt bearing that date. The landlord testified that the mail was not delivered and returned to the landlord marked "Unclaimed." The envelope shows the returned mail marked "Unclaimed, and a copy of a Registered Domestic Customer Receipt has been provided. Also provided is a copy of a 2-page print-out from Canada Post. The addressee on the envelope is covered by a Canada Post sticker and the Registered Domestic Customer Receipt has not been completed with a name or address of the intended recipient. The landlord testified that he received it back on November 4, 2015, and the tenants had already served the landlord with the Tenant's Application for Dispute Resolution, so the landlord had kept the security deposit awaiting this hearing.

The landlord has provided a Monetary Order Worksheet setting out the claim for unpaid rent as well as \$75.00 for changing the locks to the rental unit, \$10.67 for the cost of registered mail for returning the security deposit to the tenants, and \$235.32 for the City water bill. The landlord testified that the tenants did not return both keys to the rental unit within a reasonable time and the landlord had to change the locks. The tenants returned one of the keys on October 1 and the other on October 13, 2015. The locks

were changed on October 5. The invoice provided is from the landlord, who is a self-employed contractor who does renovations and handy-man services.

Water is not included in the rent, but is in the landlord's name. When bills are received, the landlord takes them to the tenants and they pay the bill. The final bill has arrived, a copy of which has been provided, and the landlord adds \$45.00 for the following month due to the tenant's failure to give proper notice to vacate the rental unit.

The first tenant testified that the notice given to the landlord to end the tenancy was posted to the landlord's door on August 28, 2015 and it is dated August 28, 2015. The following day the tenant called the landlord about doing a move-out condition inspection, and the parties arranged a time. The tenants and the landlord showed up and the landlord had 2 people with him to show the rental unit to. The landlord told the tenants that they owed one month's rent because the notice had wrong dates on it and said he never received it until August 31.

The tenant further testified that the tenants were expecting the security deposit and had someone checking the mail regularly and no mail was received from the landlord.

The tenants were aware there would be another water bill, but the landlord didn't provide one prior to the tenants vacating the rental unit. The tenant agrees with the bill, but not the amounts added by the landlord.

The tenant also testified that one of the keys to the rental unit was returned to the landlord on September 29, 2015 and she told the landlord the other would be returned later that day because it was in her husband's car. The tenant went to the rental unit and no one answered the door, although all vehicles were there. The tenant also phoned and texted the landlord, and after the 3rd attempt to reach him, the tenant gave the second key to a person who lives there on October 1, 2015. The tenants deny that the landlord had to change the locks.

The second tenant testified that he disagrees with the water bill because the landlord used the tenants' water to water shrubs in another yard.

Analysis

Where a party makes a monetary claim against another party, the onus is on the claiming party to establish the claim.

Firstly, with respect to the landlord's claim for unpaid rent, the landlord testified that he received the tenant's notice to end the tenancy on August 31, 2015. I accept that

testimony, and regardless of how the landlord received it, the *Act* requires a tenant to give notice prior to the day rent is payable under the tenancy agreement. Further, the *Act* requires any party who makes a claim to do whatever is reasonable to mitigate any loss. In this case, I find that the landlord received the tenant's notice the day before rent is payable under the tenancy agreement, and the landlord must have been too busy to re-rent it. The landlord has failed to mitigate any loss or prove that the tenants didn't give notice in time. Therefore, the landlord's application for monetary compensation for unpaid rent is dismissed.

With respect to the water bill, I discount the second tenant's testimony that the landlord used the tenant's water for other purposes. That is not relevant to the applications before me. I find that the tenants are responsible for the bill, being \$190.32, but not any portion added on by the landlord. I also accept the testimony of the first tenant that the landlord did not provide a copy of the water bill prior to serving evidence, and the tenants were expecting to pay it.

With respect to the landlord's claim for changing the locks to the rental unit, the tenant testified that she returned both keys by October 1, 2015. The landlord disputes that testimony, however where it boils down to one person's word over another, the claim has not been proven, and I dismiss the landlord's \$75.00 claim.

With respect to the landlord's claim for sending registered mail to the tenant, that is the responsibility of the landlord to return it. It is not a cost to be borne by a tenant, and I dismiss the landlord's \$10.67 claim.

The *Residential Tenancy Act* requires a landlord to return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount. In this case, the tenants provided a forwarding address to the landlord in the tenants' notice to end the tenancy, and the parties agree that the tenancy ended on September 30, 2015. The landlord testified that he sent the security deposit to the tenants on October 9, 2015 and has provided evidence of registered mail however neither the address it was sent to nor the name of the addressee is visible. The landlord's position is that he sent the security deposit to the tenants and it was returned by the post office unclaimed.

The tenants filed their application for dispute resolution on October 16, 2015 which contains another address of the tenants. On October 29, 2015 the tenants received a hearing package to serve on the landlord. The tenants have provided proof of serving it to the landlord by registered mail on October 30, 2015. The Landlord's Application for

Dispute Resolution was filed on February 25, 2016, 4 months after receiving the tenant's application. The landlord had an obligation under the *Act* to deal with the security deposit long before that regardless of whether or not the cheque was returned in the mail. I find that the tenants have established a claim for double the amount of the security deposit, or \$1,300.00.

Having found that the landlord is owed \$190.32 and the tenants are owed \$1,300.00, I set off those amounts, and I grant a monetary order in favour of the tenants for the difference in the amount of \$1,109.68.

I also find that the landlord needed not sue the tenants to recover the water bill money, and therefore, the tenants are entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,159.68.

This order is final and binding and may be enforced.

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: March 23, 2016

Residential Tenancy Branch

