



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: MND, MNDC, MNR, MNSD, FF
TENANT: MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for loss or damage under the Act, regulations or tenancy agreement, for damage to the unit, site or property, for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of double the security and pet deposits, for compensation for damage or loss under the Act, regulations or tenancy agreement, and to recover the filing fee.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on July 29, 2015, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on August 2, 2015 and then again on January 10, 2016 when the Tenant's Application was amended, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation for damages and if so how much?
3. Is there loss or damage to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is there unpaid rent or lost rental income and is the Landlord entitled to compensation?
6. Is the Landlord entitled to retain the Tenant's deposits?

Tenant:

1. Is the Tenant entitled to recover double the security and pet deposits?
2. Is there a loss or damage to the Tenant and is the Tenant entitled to compensation?

Background and Evidence

This tenancy started on September 1, 2014 as a fixed term tenancy with an expiry date of August 31, 2015. Rent was \$2,150.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$1,100.00 and a pet deposit of \$1,100.00 on August 8, 2014. No condition inspection reports were done for this tenancy. The Landlord and Tenant both said they requested a walk through but no reports were completed to establish the condition of the unit at the start or end of the tenancy.

The Landlord's agent said the Landlord was out of the country and although he does not have a good understanding of the situation he is representing the Landlord. The Agent asked if the hearing could be adjourned. The Arbitrator said there was ample time for the Landlord to prepare the Agent as the Landlord filed his application on July 29, 2015 and the hearing date is January 19, 2016. The Arbitrator declined the Agent's request for an adjournment. The Landlord's Agent agreed no condition inspection reports were completed with the Tenant, but the Agent said the Tenant was asked to do a walk through and the Tenant was too busy to make time to do the reports.

The Agent said the Landlord is claiming \$19,159.40 in damages and unpaid rent. The unpaid rent because the tenancy agreement was for a fixed term to August, 2015 and the Tenant moved out June 30, 2015. As well the Agent said the rental unit was left in

very poor condition and the Landlord had to pay for cleaning and repairs to bring the rental back to a good condition. The Agent said the Landlord has not submitted a monetary worksheet to itemize the claims nor has the Landlord submitted any evidence to support his claims. There is no tenancy agreement, no paid receipts and no invoices to prove a loss or to verify the amount of the loss.

The Tenants said the Landlord's claims are not valid because he did not do condition inspection reports at the start or the end of the tenancy and she submitted photographs of the rental unit at the end of the tenancy and it shows the unit was clean and tidy. The Tenant said they gave the Landlord notice at the end of May, 2015 that they were ending the tenancy and moved out of the rental unit on June 30, 2015. The Tenant said the Landlord agreed to end the tenancy and the Landlord showed the rental unit to a number of potential tenants during June, 2015. The Tenant continued to say that she is applying for double her security and pet deposits in the amount of \$1,100.00 + \$1,100.00 = \$2,200.00 X 2 = \$4,400.00. The Tenant said the Landlord has not returned her deposits and she is now requesting double as per the Act.

Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord's claim against the Tenant's security and pet deposits for damage is extinguished. As a result, I dismiss the Landlord's request to retain the Tenant's security and pet deposits.

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit. In this situation the Landlord has not established a base line to determine if any damage was caused by this tenancy. In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant has taken steps to minimize the loss.

The Landlord's Agent and the Landlord have not provided any evidence or proof to support the Landlord's claims. The Landlord has not established proof of a loss, he has not verified the loss, he has not proven the Tenant is solely responsible for any loss the Landlord has incurred and the Landlord has not shown how he tried to mitigate any of his losses. Consequently, I find the Landlord has not established grounds to prove his claims and I dismiss the Landlord's application without leave to reapply due to lack of evidence.

With respect to the Tenants' application for double their security and pet deposits in the amount of \$4,400.00.

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenant's testimony and written evidence that the tenancy ended on June 30, 2015 and the Tenant gave the Landlord her forwarding address in writing by registered mail on July 11, 2015, which pursuant to section 90 of the Act is deemed to be received by the Landlord on July 16, 2015. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy but he did make an application to retain the security and pet deposits on July 29, 2015, which is within the

15 day time limit under section 38 of the Act. Consequently the Tenant is not entitled to double the security and pet deposits. As the Landlord has been unsuccessful in retaining the Tenant's security and pet deposits I order the Landlord to return the Tenant's security deposit in the amount of \$1,100.00 and the Tenant's pet deposit in the amount of \$1,100.00 for a total of \$2,200.00.

As the Landlord has been unsuccessful in this matter I order the Landlord to bear the cost of the filing fee that he has already paid.

As the Tenant has been partially successful I order the Tenant to recover the filing fee of \$50.00 from the Landlord.

A monetary order has been issues to the Tenant for the following:

Security deposit	\$ 1,100.00	
Pet deposit	\$ 1,100.00	
Filing fee	\$ 50.00	
Balance owing		\$ 2,250.00

Conclusion

The Landlord's application is dismissed without leave to reapply.

A monetary order has been issued to the Tenants' for \$2,250.00.

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 19, 2016~~
Correction March 14, 2016

Residential Tenancy Branch