



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with a tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*") for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of their security deposit under the *Act*, and to recover the cost of the filing fee.

The tenants, a support person for the tenants, the landlord and the spouse of the landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the affirmed testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Issues to be Decided

- Are the tenants entitled to a monetary order for money owed or compensation under the *Act*, regulation or tenancy agreement, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Should the tenants recover the cost of their filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on November 1, 2014 and as of October 31, 2016 included an option for an additional two year lease. Monthly rent of \$1,950.00 was due on the first day of each month. The tenants paid a security deposit of \$975.00 at the start of the tenancy which the landlord continues to hold.

The tenants' monetary claim of \$5,825.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT
1. Compensation fee	\$5,000.00
2. Extra compensation fee	\$500.00
3. Security deposit	\$975.00
4. Moving costs	\$300.00
<i>Less Damage repair cost</i>	<i>-(\$650.00)</i>
<i>Less security deposit from bachelor suite</i>	<i>-(\$300.00)</i>
TOTAL	\$5,825.00

The tenants submitted a copy of a letter signed by the parties dated June 19, 2015. In that letter it reads, in part:

"We, Landlord & tenant of [rental unit address] both agreed to terminate existing Rental/Lease contract on August 31, 2015, with conditions as follows.

Landlord will pay to tenant

Compensation fee	\$5,000.00 + 500.00
Damage Deposit	\$975.00
Moving Cost	\$300.00

Total	\$6,275.00
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Minus

Damage Repair cost	\$650.00
&	
Deposit from Bachelor suite	\$300.00

Exact amount to be paid	\$5,325.00 + 500
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Also tenant will be allowed to stay for July and August, 2015 without monthly rental payment..."

[reproduced as written except for anonymizing rental unit address and inserting a strikethrough over the portion which was added to the typed agreement in handwriting]

The landlord testified that after signing this agreement, he changed his mind on June 25, 2015. The tenants testified that they had a written mutual agreement to end the tenancy and acted on that fact by vacating the rental unit on September 4, 2015. The tenants confirmed that they did not compensate the landlord for over-holding in the rental unit by four days by vacating on September 4, 2015.

The landlord stated that he issued the tenants a 10 Day Notice and the tenants responded that based on their written mutual agreement to end the tenancy, rent for July and August were not owing by the tenants and they vacated solely due to their mutual agreement and not in response to a 10 Day Notice.

The landlord confirmed that as of the date of the hearing he has not applied against the tenants for unpaid rent for the months of July and August of 2015.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenants' claim for compensation – The tenants have claimed a total of \$5,825.00 as described above, based on a written mutual agreement to end the tenancy between the parties. While the landlord testified that he changed his mind on January 25, 2015 after signing the written agreement between the parties on June 19, 2015, the tenants did not change their minds and relied on the signed mutual agreement of the parties to end the tenancy as of August 31, 2015.

I find that the tenants had the right under the *Act* to rely on the written mutual agreement to end the tenancy which was signed by the parties. I am not satisfied; however, that the **\$500.00** portion added to the typed agreement in writing after the fact was not part of the original agreement and is not enforceable as a result. Therefore, I find the tenants are entitled to the reduced amount of **\$5,325.00**. As the tenants confirmed that they failed to vacate the rental unit on August 31, 2015 as agreed to in writing, I deduct \$251.60 from the amount of \$5,325.00 which results in the tenants' claim being reduced to **\$5,073.40**. I have reached the deduction amount of \$251.60 by taking the monthly rent of \$1,950.00 and dividing that amount by 31 as there was 31 days in August 2015. That total provides a per diem rental amount of \$62.90 per day which I then multiplied by four days of over-holding by the tenants for a total deduction amount of \$251.60.

As the tenants' application had merit, I grant the tenants the full recovery of the cost of the filing fee in the amount of **\$100.00**.

Given the above, the tenants have successfully established a total monetary claim of **\$5,173.40**. I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of \$5,173.40.

Conclusion

The tenants' application has merit.

The tenants have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$5,173.40. This order 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: June 6, 2016

Residential Tenancy Branch