



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NHC PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD MNDC FF – Landlord’s application
MNDC MNSD FF

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by the Landlord and the Tenants.

The Landlord filed their application on January 20, 2016 seeking to obtain a Monetary Order for: unpaid rent or utilities; to keep the security and or pet 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 Tenants filed their application on December 22, 2015 seeking to obtain a Monetary Order for: the return of double their 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 hearing was conducted via teleconference and was attended by two agents for the Landlord (the Landlords) and both Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenants affirmed they served the Landlords with copies of the same documents they had served the RTB. The Landlords acknowledged receipt of the Tenants’ application for Dispute Resolution; hearing documents; and evidence. No issues regarding service or receipt were raised. As such, I accepted the Tenants’ submission as evidence for these proceedings.

The Tenants testified they did not receive the Landlords’ application for Dispute Resolution or hearing documents. The Landlords were not able to submit evidence, such as the date or tracking number, of how and when their hearing documents were served. Accordingly, I initially dismissed the Landlords’ application, until the parties agreed to settle all issues relating to this tenancy.

Issue(s) to be Decided

1. Have the parties agreed to settle these matters?
2. If so, what were the terms of that settlement agreement?

Background and Evidence

The parties entered into a fixed term tenancy agreement which began on May 1, 2015 and was not set to end until August 30, 2016. Rent of \$1,625.00 was payable on the first of each month. On or around May 1, 2015 the Tenants paid \$813.00 as the security deposit. A move-in condition statement was completed on or around May 1, 2015 and the move out document was completed on October 21, 2015. The Tenants provided the Landlords with their forwarding address on October 21, 2015 on the move out document.

The Tenants had installed an automatic garage door opener in the garage of the rental unit. That garage door opener was left in the rental unit when the Tenants vacated at the end of October 2015. The Tenants attributed a value of \$600.00 to that garage door opener.

During the course of this proceeding the parties agreed to settle these matters.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

Notwithstanding the above listed dismissal, with leave, of the Landlords' application; both parties agreed to settle all matters relating to this tenancy on the following terms:

- 1) The parties agreed to make both monetary claims equal resulting in neither party having to pay the other monetary compensation; except and unless the conditional monetary order comes into effect as listed below;
- 2) As per my oral Order, the Landlords were ordered to serve their current Tenant(s) 24 hour written notice of entry to the rental unit garage effective Thursday July 28, 2016 at 5:00 p.m. for the purpose to allow the Tenants' Agent to remove the Tenants' automatic garage door opener system and the control(s);
- 3) In consideration for this mutual settlement each person agreed that no further claims would be made by anyone whatsoever arising from this tenancy;

- 4) Each person acknowledged their understanding that this settled Decision resolves the matters contained in both applications and that no findings were made on the merits of the said applications for dispute resolution; and
- 5) Each person agreed that the terms of this settlement agreement were reached by their own free will and without undue pressure or intimidation.

The parties agreed to settle these matters; therefore, I declined to award recovery of the filing fees and ordered the following, pursuant to section 62 of the *Act*:

The parties were advised that they were to allow each other a reasonable amount of time, such as up to one half hour, to attend the rental unit on Thursday July 28, 2016 in case of an event that could delay their attendance, such as a traffic disruption.

In the event the Landlord does not allow the Tenants' Agent access to the rental unit garage to uninstall and remove the garage door opener and control(s) from the rental property on Thursday July 28, 2016 at 5:00 p.m., the enclosed conditional monetary order for \$600.00 will come into full force and effect upon service upon the Landlords.

In the event the Tenants' Agent does not attend the rental unit on Thursday July 28, 2016 sometime between 5:00 p.m. and 5:30 p.m. the Tenants will be considered to have abandoned their the garage door opener and control(s), pursuant to the Regulation. If the Tenants' Agent does not attend the rental unit as stipulated above, the \$600.00 Monetary Order will become void and of no force or effect leaving the Landlord in possession of the garage door opener to do with as he sees fit.

The Tenants' Agent is to retrieve the automatic garage door opener and control(s) in its current "as is" condition. The Tenants are reminded that they abandoned the said garage door opener nine months earlier and there are no guarantees as to its condition.

Conclusion

The parties agreed to settle these matters, pursuant to section 63 of the *Act*.

This decision is final, legally binding, 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: July 27, 2016

Residential Tenancy Branch