



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD FF

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenants applied for a monetary order for the return of their security deposit and indicated in their monetary breakdown in their Application that they were also seeking compensation for their hotel costs, for two USB drives, and for the recovery of the cost of the filing fee.

An agent for the tenants (the "agent"), a translator for the tenants, and the landlords attended the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of the testimony and documentary evidence is provided below and includes only that which is relevant to the hearing.

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

Issue to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the fixed term tenancy was submitted in evidence. The tenancy began on November 1, 2015 and was scheduled to expire on October 31, 2016 at which time the parties could enter into a new fixed agreement or the agreement would revert to a month to month agreement.

The tenants have claimed \$2,335.46 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Repayment of the remainder of the security deposit	\$2,000.00
2. Motel costs	\$319.70
3. USB drives x 2	\$15.76
TOTAL	\$2,335.46

The landlords referred to a document signed by the parties and dated October 31, 2015. The document was submitted in evidence and reads in part:

“...As per our meeting of October 30, 2015 in which you and/or your daughter [first name of daughter] advised us that you do not want to rent the property...

...

We acknowledge that we entered into a 12 month Tenancy Agreement and that you no longer wish to rent the property.

Since this property was held for you in good faith we have agreed to return \$5,000.00 of the \$7,000.00 which was for a damage deposit and 3 months' rent that you agreed to pay in advance.

We in return will release you from your 12 month Tenancy Agreement and the \$2,000.00 shall be our compensation due to the fact that it will not be possible to rent the home by the 1st of November 2015...”

[reproduced as written]

The landlords testified that they relied on the agreement signed on the parties to end the fixed term tenancy as the tenants decided not to rent the rental unit after having signed the fixed term tenancy agreement on October 8, 2015. The agent testified that the tenants did not see the document before signing it.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did what was reasonable under the *Act* to minimize the damage or losses that were incurred.

Tenants' claim for compensation – The tenants have claimed \$2,335.46 as described above. Having considered the mutual agreement signed by the parties on October 31, 2015 to end the fixed term tenancy, I find the tenants have failed to meet the burden of proof in proving their claim. In reaching this decision, I find it highly unreasonable that the tenants would sign a mutual agreement to end the tenancy and agree on monetary compensation to the landlords without first seeing the document. Furthermore, I note that the agent failed to explain how the signatures of the tenants would be on the document if they had not seen the document. In addition, I find that the landlords had the right under the *Act* to rely on the mutual agreement to end the tenancy which was signed by the parties.

Based on the above, I **dismiss** the tenants' application in full, **without leave to reapply** due to insufficient evidence. I find the tenants have failed to meet all four parts of the test of damages or loss described above.

Conclusion

The tenants' application is not successful.

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: July 4, 2016

Residential Tenancy Branch