



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC O

Introduction

This hearing dealt with a tenants' Application for Dispute Resolution (the "Application") 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 and other unspecified relief.

The tenants and an agent for the landlord (the "agent") 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.

Issue 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?

Background and Evidence

The parties agreed that a month to month tenancy began on or about January 1, 2013 and that the tenants vacated the rental unit on May 8, 2016. During the tenancy, monthly rent of \$1,000.00 was due on the first day of each month.

The tenants' monetary claim is comprised of \$1,000.00 for the repayment of May 2016.

The tenants write in their Application that the landlord should not have cashed the rent cheque for May because they lived elsewhere in May. The parties agreed during the hearing that the tenants did not vacate the rental unit until May 8, 2016.

In addition, a copy of an "End of Tenancy Agreement" (the "Mutual Agreement") dated April 26, 2016 was submitted in writing and was signed by the parties on April 26, 2016. In the Mutual Agreement it reads in part:

“Let this letter stand as a written agreement between [name of landlord] (landlord) and the tenants of [rental unit address] stating that a \$1,000.00 rent rebate will be afforded to [name of tenants].

A secondary sum of \$800.00 will be afforded to the tenants by [name of purchaser] (purchaser) and [name of landlord] (landlord) to aid in the cost of moving. This amount will be divided in half, with each of the two parties paying \$400.00.

The moneys are to be released after the property has been cleared of all belongings and the residence vacated...”

[reproduced as written with the exception of anonymizing names and the rental unit address]

The tenants testified that they did receive and cash a cheque in the amount of \$1,800.00 which is comprised of a month rent rebate plus \$800.00 for moving costs. The agent testified that the landlord had the right to cash the rent cheque for May 2016 as the tenants continued to reside in the rental unit, and ultimately the rent was returned in the cheque for \$1,800.00 which included an extra \$800.00 for moving costs for the tenants.

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 landlord. 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 to minimize the damage or losses that were incurred.

Tenants' claim for compensation – The tenants have claimed a total of \$1,000.00 as described above. I have carefully considered the Mutual Agreement signed by the parties and find that the tenants are not entitled to further compensation under the *Act*. Both parties had the right to rely on the terms of the signed Mutual Agreement which I find the landlord complied with by paying the tenants \$1,800.00 as agreed. The landlord is commended for providing \$800.00 for tenant moving costs which the *Act* does not require the landlord to do.

In terms of rent for May 2016, I agree with the agent that the landlord had the right to cash the \$1,000.00 rent cheque for May 2016 as the tenants did not vacate the rental unit until May 8, 2016. I note that the tenants did cash the cheque for \$1,800.00 which satisfies the Mutual Agreement between the parties and fulfills the landlord's obligation under the Mutual Agreement to provide a rent rebate in the amount of \$1,000.00.

Based on the above, I find the tenants have failed to meet part one of the test for damage or loss described above. Therefore, **I dismiss** the tenants' Application **without leave to reapply** due to insufficient evidence.

Conclusion

The tenants' application is dismissed without leave to reapply.

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 7, 2016

Residential Tenancy Branch