



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, mnr, mnsd,

Introduction

The landlord applies for a monetary award from the tenants, for losses and expenses related to a premature ending by the tenants of a fixed term tenancy. The landlord also seeks an order to retain the security deposit and pet damage deposit and apply such amounts as against any monetary award made in her favour.

The tenants apply for a monetary award for losses and expenses arising from the same premature ending of the tenancy, but allege the tenancy was wrongfully ended by the landlord when she locked them out. The tenants also request recovery of their security deposit and pet damage deposit, doubled.

The landlord and the male tenant both attended the hearing and provided oral testimony. Both parties have filed written evidence as well. All such evidence and testimony has been considered in the making of this decision.

Issue(s) to be Decided

Is either party entitled to a monetary order from the other as a result of the premature ending of this tenancy? How should the security deposit and pet damage deposit be dealt with?

Background and Evidence

The following is a brief summary of the evidence and testimony provided by the parties:

The landlord submits that a tenancy was agreed to, and scheduled to begin March 1. However, the tenants changed their minds, and decided not to move in. They stopped payment of their rent cheque for March. The landlord suffered expenses including the loss of rent for March, the cost of revising her insurance to include a vacancy permit, the cost of changing locks and the garage remote, time to reprogram the garage remote, and the cost of utilities for the home for March.

The tenants submit that they intended to rent the premises, and on March 1 were given possession. They moved items into the garage, wanting to do some painting and improvements in the home. An argument with the landlord ensued, and the following

day they were unable to access the premises with the keys and remote the landlord had given them. They believe the landlord changed the locks and the ability of the remote to open the garage door. They found a copy of a mutual agreement to end tenancy prepared by the landlord for them to sign. Eventually they signed this document and returned it to the landlord. In the meantime, they were obliged on short notice to find other temporary living accommodation, which was more expensive than the rent would have been at the landlord's rental home. They had to rent a storage locker for some of their goods. They seek reimbursement for these various expenses.

Analysis

As a preliminary matter, I must deal with the issue of the reliability and credibility of evidence. The landlord's version of events and the tenants' version of events conflicted at times. I have determined that where such conflicts have occurred, I prefer the evidence of the tenants.

As an example and to support my determination in this regard, the male tenant testified that on March 1, the date possession of the rental unit was to begin, he moved some of his possessions in the garage. An argument with the landlord occurred that evening. The following day he returned to the premises, but found he could not gain access because that the key and remote did not work. He was unable to move in further possessions, and was unable to retrieve his possessions. In fact, he never recovered his possessions until March 15, when advised by the police to go to the premises, and he found his possessions strewn all over the cul-de-sac. This testimony was given in straight forward, forthright manner. It had a ring of truth and was logical in its suggestion.

The landlord initially testified that the tenants were given the keys and remote, but never took possession or moved in. When specifically asked when she first knew that the tenants had not moved in, she testified that it was March 4, the date that she took out vacancy insurance for her home. Later at the hearing she contradicted her initial testimony as to possession, and acknowledged that some possessions had been moved into the garage by the tenants on March 1, although she minimized the value and nature of these possessions. An email she wrote on March 2 indicates she was fully aware that the tenants had moved possessions into the garage. In a later email, written March 15, she wrote "I expect your abandoned items to be removed from the garage by March 22."

As a further indication of a lack of credibility of the landlord's evidence, I note that she made a claim for the value of a garage remote control, which the tenants had not returned. She tendered into evidence a receipt purportedly indicating the purchase of a

remote control from Home Depot on March 16. However, on that same day of March 16, she wrote an email to the tenants, stating that if the remote control was not received by her within 5 days (via registered mail), she would hold the tenant liable for all costs relating to labour, materials and preprogramming costs of a new remote. The fact she purchased a remote control on the same day as this email, suggests that the email was not sent in good faith.

It is not logical that the tenant having been granted possession of the premises including the garage, would move personal items in the garage although not intending to take possession of the home, then be unable to retrieve them despite no change having been made to the garage door opener, and despite retaining the remote control for the garage, as the landlord suggests. It is more likely, and more logical, as testified to by the tenant, that after the possessions were left in the garage on March 1, and before the tenant returned on March 2, the landlord altered the garage door opener, so that the remote would no longer open the door.

The demeanor of the landlord at the hearing also adversely affected her credibility. She repeatedly talked on and over my voice, despite several warnings to stop talking when I was also speaking, or when I was attempting to ask her questions. Had this occurred only once, I would have dismissed it as nervousness, but I found this repeated tendency of the landlord to demonstrate a lack of respect for the arbitration and hearing process.

I accept that the landlord wrongfully terminated this tenancy effective March 2. This was evidence by the fact that the tenants were denied possession commencing that date, and the landlord's intention in this regard is supported by her having prepared a mutual agreement to end tenancy that date. It is further supported by the landlord having obtained vacancy insurance on March 4. Having denied the tenants access to the home, I find that the landlord has no right to claim her loss of rent from the tenants, or claim the cost of utilities for the premises for March, or the cost of changing the lock, the remote, or obtaining vacancy insurance. In short, the landlord's claim is dismissed in full.

I accept that as a result of this improper termination of the tenancy by the landlord, the landlord is liable to reimburse the tenants costs of the short rental differential for accommodation (\$1,775.00) and public storage costs (\$247.50). I find these costs of the tenant arose specifically as a result of the landlord's termination of the tenancy. The claim for the tenant's utility costs is denied, as the tenants would have paid utilities regardless of their location, and any differential is denied as insignificant on the *de minimus* principle. The tenants are also award recovery of their \$100.00 filing fee. These aspects of the tenants' claim total \$2,122.50.

In addition to this sum the landlord is ordered to return the tenants' security deposit of \$1,400.00 and the tenants' pet damage deposit of \$1,400.00. The tenants are not entitled to recovery of double their deposits, as the landlord's application to retain the deposits was filed with the allowable 15 day period from the date of the receipt of the tenant's forwarding address. Should the landlord fail to return these deposits within 15 days of receipt of this decision however, the tenant shall be at liberty to file a new application for a further monetary representing a doubling of the deposits.

Conclusion

The landlord shall pay to the tenants the total sum of \$4,922.50 forthwith, representing the monetary awards and return of the deposits referenced above.

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: August 17, 2016

Residential Tenancy Branch