



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNDC MNSD FF

For the landlords: MNSD FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “*Act*”). The tenants applied for a monetary order for the return of 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 landlords applied for a monetary order to retain the tenants’ security deposit and to recover the cost of the filing fee.

The landlord L.P. (the “landlord”) and the tenants attended the teleconference hearing as scheduled. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither party raised any concerns regarding the service of documentary evidence and their respective Applications.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit under the *Act*?

Background and Evidence

The parties confirmed that a written tenancy agreement did not exist between the parties but that a verbal tenancy was formed which was scheduled to begin on March 15, 2016. The tenants did not move into the rental unit and are seeking the return of their security deposit. The landlords are seeking to retain the tenants' security deposit to offset the loss of rent between March 15, 2016 and March 31, 2016. The parties disputed the amount of monthly rent and when it was due. The landlords claim that monthly rent was \$1,200.00 per month and due on the 15th day of each month. The tenants claim that the monthly rent was \$1,150.00 per month and was due on the first day of each month. There is no dispute that the tenants paid a security deposit of \$600.00 at the start of the tenancy. There is also no dispute that the tenants did not move into the rental unit.

The tenants testified that they did not move into the rental unit due to a dispute over the amount of rent. The difference between the tenants' version of the amount of rent and the landlords' version of the amount rent is only \$50.00 per month. The tenants did not file an application to dispute the amount of rent and instead decided to not move into the rental unit after sending a text message to the landlords on March 3, 2016.

The landlords were able to minimize their loss of rent by finding new tenants who moved into the rental unit on April 1, 2016. The amount of rent paid by the new tenants effective April 1, 2016 was also \$1,200.00 according to the landlord.

The landlord confirmed that they did not provide an address for service of documents to the tenants as required by the *Act*.

Analysis

Based on the documentary evidence, testimony, 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 under the *Act* to minimize the damage or loss.

Tenants' claim for the return of their security deposit – Section 38 of the *Act*, requires that a landlord must return or make a claim against the security deposit within 15 days of the later of the end of tenancy date and the date the written forwarding address is provided by a tenant to the landlord. In the matter before me, the tenants failed to provide their forwarding address in writing. As a result, the tenants' application is **dismissed, without leave to reapply**.

Landlords' claim towards the security deposit for loss of rent - The landlords have claimed against the tenants' \$600.00 security deposit for the unpaid portion of rent before the landlord could arrange new tenants to move into the rental unit after the tenants changed their mind about moving in having already paid a security deposit to the landlords. Section 16 of the *Act* applies and states:

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

[my emphasis added]

Based on the above, I find that the tenants were obligated to pay rent for March 15, 2016 and that the landlords complied with section 7 of the *Act* by minimizing their loss by finding new tenants who moved into the rental unit effective April 1, 2016. Furthermore, I find that monthly rent was \$1,200.00 given that the tenants paid one-half of the monthly rent for their security deposit.

Given the above, I find the landlords have met the burden of proof and are entitled to **\$600.00** for the loss of rent for the period of March 15, 2016 to March 31, 2016 inclusive.

As the tenants' claim is dismissed I do not grant the tenants the recovery of the cost of the filing fee.

As the landlords' claim is successful, I grant the landlords the recovery of the cost of the \$100.00 filing fee.

The landlords continue to hold the tenants' security deposit of \$600.00, which has accrued no interest since the start of the tenancy. I find that the landlords have established a total monetary claim of **\$700.00** comprised of \$600.00 for loss of March 15-31, 2016 rent, plus the recovery of the \$100.00 filing fee. **I authorize** the landlords to retain the tenants' full security deposit of \$600.00 in partial satisfaction of the landlords' monetary claim.

As the landlords failed to complete a tenancy agreement in writing and failed to provide their service address to the tenants, **I caution** the landlords to comply with section 13 of the *Act* in the future.

Conclusion

The application of the tenants has been dismissed in full, without leave to reapply.

The application of the landlords is successful.

The landlords have established a total monetary claim of \$700.00 comprised of \$600.00 for loss of rent, plus the \$100.00 filing fee. The landlords have been authorized to retain the tenants' full security deposit of \$600.00 in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing in the amount of \$100.00. This order must be served on the tenants 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: September 26, 2016

Residential Tenancy Branch

