



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC MNSD OLC FF
For the landlords: MNR MNSD MNDC 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 tenant applied for a monetary order for the return of double his security deposit under the *Act*, for a monetary order for money owed or compensation for damage or loss under the *Act*, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlords applied a monetary order for unpaid rent or utilities, for damage to the unit, site or property, to keep all or part of the tenant’s 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 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 and that was presented; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Regarding the service of documentary evidence, the landlords were advised that their correspondence portion of their documentary evidence was not considered as the landlord K.O. (the “landlord”) confirmed that the tenant was not served with that evidence prior to the hearing which I find is contrary to the Rules of Procedure.

Preliminary and Procedural Matters

Due to insufficient particulars contained in the tenant’s Application for Dispute Resolution (the “Application”) as to what section of the *Act*, regulation or tenancy agreement the tenant was seeking the landlord to be ordered to comply with, I dismiss the tenant’s request to have the landlord ordered to comply with the *Act*, regulation or tenancy agreement, without leave to reapply.

At the outset of the hearing, counsel for the tenant confirmed that the tenant was withdrawing the portion of his claim in the amount of \$614.96 for moving costs which was permitted as I find that a reduction in the tenant's claim does not prejudice the landlords. This results in the tenant's claim being reduced to \$2,600.00 for double the \$1,300.00 security deposit.

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 tenant's security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on December 9, 2015 and was scheduled to revert to a month to month tenancy after August 1, 2016. The tenant vacated the rental unit on June 26, 2016.

The parties confirmed that the tenant paid a security deposit of \$1,300.00 at the start of the tenancy. The security deposit has accrued \$0.00 in interest to date.

Evidence for Landlords' claim

The landlords are claiming a monetary amount of \$3,213.00 comprised of the following:

Item #	Description	Amount
1	Unpaid July 2016 rent	\$2,600.00
2	Cleaning fees	\$355.00
3	Plumbing repairs	\$258.00
TOTAL		\$3,213.00

Landlords' Item #1 of 3

The landlords have claimed for unpaid rent of \$2,600.00 for the month of July 2016. The parties agreed that the tenant vacated the rental unit on June 26, 2016. The tenant stated that he wrote a letter to the landlord indicating that he was leaving a month early although the parties were advised that the tenancy agreement did not require vacant possession as of August 1, 2016 and would have reverted to a month to month tenancy under the *Act* unless the parties entered into another fixed term tenancy, which they confirmed they did not.

The landlord testified that she could not recall when she received the tenant's notice to end tenancy and affirmed that the landlords listed their house for sale in June, July or August. The landlord could not recall the date the landlord's home was sold. She stated when the tenant vacated the rental unit the landlords did not attempt to re-rent the rental unit as the home was being sold.

The tenant stated that he ended the fixed term early due to the landlords failing to fix the washing machine in a timely basis and for not fixing a toilet that was not working correctly.

Landlords' Item #2 of 3

The landlords have claimed \$355.00 for cleaning costs. The landlord confirmed that an incoming or outgoing condition inspection report was not completed in accordance with the *Act*. The landlord confirmed that she did not provide photos to support the need for cleaning in the rental unit. The tenant claims that he had a cleaner attend the rental unit and that the cleaner attended on June 25, 2016.

Landlords' Item #3 of 3

The landlords have claimed \$258.00 for plumbing repairs however failed to complete an incoming or outgoing condition inspection report to support that the plumbing had been damaged during the tenancy. The landlord also confirmed that no photos were submitted to support that the plumbing was damaged and the landlords failed to provide an invoice for a plumbing repair. The tenant denied that he damaged the toilet or any other plumbing.

Evidence for Tenant's Claim

The tenant is claiming for the return of double his security deposit of \$1,300.00 for a total monetary claim of \$2,600.00. The tenant stated that he provided his written forwarding address to the landlord in an e-mail dated July 4, 2016. While the landlord could not recall the date she received the e-mail from the tenant with his forwarding address, she did not dispute that she received the e-mail from the tenant with his written forwarding address contained in the e-mail.

The landlords filed their Application for Dispute Resolution (the "Application") on November 30, 2016. The landlords did not return the tenant's security deposit after being served in August 2016 with the tenant's Application. The landlords waited until November 30, 2016 before filing their Application claiming towards the tenant's security deposit. The landlords continue to hold the tenant's security deposit of \$1,300.00.

The parties confirmed that they regularly communicated by e-mail during the tenancy. The landlord could not recall specific dates during the hearing including; the dates of e-mails from the tenant; the date the notice to end tenancy was received, the date her home was listed for sale or the date her home sold. The tenant was able to recall specific dates such as the date he sent his notice to end tenancy, the date the cleaner attended the rental unit, and the date he provided his written forwarding address to the landlord.

Analysis

Based on the documentary evidence, the oral 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 is reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenant's Claim

The tenant has claimed for the return of double his security deposit under the *Act* in the total amount of \$2,600.00, which is double the amount of the original security deposit amount of \$1,300.00. Section 38 of the *Act* applies and states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, **as applicable**.

[my emphasis added]

While e-mail is not the preferred method of service for the tenant's written forwarding address due to service issues that could arise, I am satisfied based on the evidence before me that the landlords were sufficiently served with the tenant's written forwarding address. Firstly, the landlord did not deny that she received the tenant's forwarding address by e-mail. Secondly, the landlord did not deny that the e-mail could have been received on July 4, 2016 as the landlord indicated that she "could not recall" when asked about the specific date the e-mail was received. In fact, due to the landlord's vague recollection of dates during the hearing as a whole, I prefer the testimony of the tenant over that of the landlord in terms of dates provided as I find the tenant's testimony to have been clear and detailed, whereas the landlord's testimony was vague during the hearing.

In addition, I have considered that the landlords did not submit their Application claiming towards the tenant's security deposit until November 30, 2016 which is over four months after being served with the tenant's Application seeking the return of his security deposit. Based on the above, I find the landlords breached section 38 of the *Act* by failing to return the tenant's security deposit of \$1,300.00 within 15 days of receiving the tenant's forwarding address written in an e-mail on or about July 4, 2016, which is a later date than the end of tenancy date which was June 26, 2016.

The landlords waited over four full months before submitting their Application which included a claim towards the tenant's security deposit. Although the articulated student who was assisting the landlords stated during the hearing that she it was her opinion that section 38(3) of the *Act* would apply, I disagree. Section 38(3) of the *Act* states the following:

38 (3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) **the director has previously ordered the tenant to pay to the landlord, and**

(b) at the end of the tenancy remains unpaid.

[my emphasis added]

Given the above, I find the landlords have failed to provide any evidence that they had an order that required the tenant to pay anything prior to the hearing as set out in Section 38(3)(a) of the *Act*. As a result, I find the landlords had no right under the *Act* to retain any portion of the tenant's security deposit and that the tenant did not authorize the landlords to retain any portion of his security deposit. Therefore, I find the tenant has met the burden of proof to prove his

claim and is entitled to the return of double his original security deposit of \$1,300.00 for a total amount of **\$2,600.00** from the landlords as claimed.

Landlords' Item #1 of 3

The landlords have claimed for unpaid rent of \$2,600.00 for the month of July 2016. In that matter before, I find the tenant breached section 45(2) of the *Act* as that section of the *Act* applies and states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

[my emphasis added]

In the matter before me, I find the tenant could not have ended the tenancy any earlier than August 1, 2016 which was the scheduled end date of the fixed term tenancy and of which was the date the tenancy would have reverted to a month to month tenancy. Furthermore, I find the tenant did not meet the requirements of section 45(3) of the *Act* listed above as the tenant provided insufficient evidence that the landlords' failed to comply with a material term of the tenancy agreement. Therefore, I find the landlords have met the burden of proof for this portion of their claim and that the tenant owes the landlords **\$2,600.00** for loss of rent for the month of July 2016 due to the tenant breaching a fixed term tenancy.

Landlords' Item #2 of 3

The landlords have claimed \$355.00 for cleaning costs. I find the landlords have failed to meet the burden of proof due to insufficient evidence. In reaching this decision I have considered that an incoming and outgoing condition inspection report was not completed in accordance with the *Act*, no photos were submitted to support that cleaning was required and the tenant testified that

the rental unit was cleaned. Therefore, this portion of the landlords' claim is **dismissed without leave to reapply** due to insufficient evidence.

Landlords' Item #3 of 3

The landlords have claimed \$258.00 for plumbing repairs. I find the landlords have failed to meet the burden of proof due to insufficient evidence. In reaching this decision I have considered that an incoming and outgoing condition inspection report was not completed in accordance with the *Act*, no photos were submitted to support that the plumbing was damaged, and there was no invoice or receipt submitted by the landlords to support the cost claimed. Therefore, this portion of the landlords' claim is **dismissed without leave to reapply** due to insufficient evidence.

As both parties have been successful in proving a monetary claim of **\$2,600.00** I find that those amounts offset each and I find that a monetary order is not necessary for either party. I also note that this includes the offsetting of the filing fees for the parties.

The landlord is reminded that sections 23 and 35 of the *Act* require a landlord to complete an incoming and outgoing condition inspection at the start and at the end of the tenancy respectively.

Conclusion

The applications of both parties result in offsetting \$2,600.00 monetary awards for each party, resulting in a zero balance owing by either party. Accordingly, a monetary order is not necessary.

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: February 20, 2017

Residential Tenancy Branch