



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, MNDC, FF
Tenants: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord provided documentary evidence to confirm both tenants were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 9, 2017 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

In addition, I note that this hearing was originally scheduled as a result of the tenants' Application for Dispute Resolution for return of double the amount of the security deposit.

Based on the submissions of the landlord, I find that both tenants have been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

It must also be decided if the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on July 17, 2015 for a 1 year and 1 day fixed term tenancy for a monthly rent of \$1,850.00 due on the 1st of each month with a security deposit of \$3,700.00 paid. The landlord testified the tenancy ended on August 2, 2016.

The landlord testified that she did not receive the tenants' forwarding address until she received the tenants' Application for Dispute Resolution. The landlord could not recall when she received the tenants' Application. I note that the tenants' Application was received by the Residential Tenancy Branch on September 16, 2016.

The landlord testified that the rental unit was brand new at the start of the tenancy. She has submitted several photographs of the condition at the end of the tenancy and estimates for the following claims:

- Hardwood floor replacement totalling \$14,720.00;
- Painting of 2 rooms, 2 bathrooms, living room, and closet for \$2,236.00;
- Cabinet door replacement for \$9,912.00;
- Kitchen tile replacement for \$2,760.00; and
- Material costs of \$10,472.00.

While the total amount of the estimate for repairs totals \$40,100.00 the landlord's total claim as noted on her Application for Dispute Resolution was \$25,000.00.

Analysis

In the absence of the tenants I dismiss their Application for Dispute Resolution in its entirety.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I am satisfied by the landlord's undisputed submissions that the tenants caused the damage to the rental unit as outlined her claim and that she has established the costs to repair the damage exceeds the maximum allowable claim of \$25,000.00. As such, I find the landlord is entitled to \$25,000.00 in full satisfaction of all claims resulting from this tenancy.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Residential Tenancy Policy Guideline #17 states that an arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days

of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing whether or not the landlord may have a valid monetary claim.

The Guideline also states the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on either a landlord's application to retain all or part of the security deposit; or a tenant's application for the return of the deposit.

As such, despite the fact that I have dismissed the tenant's Application for Dispute Resolution above because they have failed to attend this hearing, I still must apply the relevant clauses of Section 38 the *Act* in relation to the disposition of the security deposit at the end of the tenancy.

While the landlord cannot specifically recall when she received the tenants' Application for Dispute Resolution that contained the tenants' forwarding address I find on a balance of probabilities that the landlord would have been served with the tenants' Application within 3 days of submitting their Application.

I make this finding, in part, because the *Act* requires this service be completed within 3 days of making the Application and it is the practice of Residential Tenancy Branch to provide sufficient information to applicants of this requirement.

Allowing 5 days for the service to be effected if completed by registered mail, I find, on a balance of probabilities, the landlord received the tenants' Application on or around September 24, 2016.

Therefore and in accordance with the landlord's testimony, I find the landlord received the tenants' forwarding address on September 24, 2016. As a result, I find the landlord had until September 10 to return the deposit or file a claim against it. The landlord submitted her Application for Dispute Resolution on January 9, 2017 or 4 months after receipt of the forwarding address.

As a result, I find the landlord has failed to comply with her obligations under Section 38(1) and the tenants are entitled to double the amount of the deposit for a total of \$7,400.00.

As the landlord has been successful in her Application in the amount of \$25,000.00 I order that the amount noted that the tenants are entitled for double the security deposit must be applied to the landlord's award.

Conclusion

Based on the above, I grant the landlord a monetary order in the amount of **\$17,700.00** comprised of \$17,600.00 for the above award and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: March 14, 2017

Residential Tenancy Branch