



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNSD, MNDC, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlords comply with the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and both landlords attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other. No issues with respect to service or delivery of documents or evidence were raised by the parties, however I ordered the landlords to provide to me a copy of the tenancy agreement and move-in/out condition inspection report after the hearing had concluded. I have now received that evidence, and all evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for return of all or part or double the amount of the pet damage deposit or security deposit?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the landlords subletting the rental unit and collecting rent from 2 sources?
- Should the landlords be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to subletting and return of the security deposit and pet damage deposit?

Background and Evidence

The tenant testified that this fixed term tenancy began on March 15, 2016 expiring on September 15, 2016 and thereafter reverting to a month-to-month tenancy which ultimately ended on December 9, 2016. Rent in the amount of \$700.00 per month was payable in advance on the last day of each month for the following month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the

amount of \$350.00 as well as a pet damage deposit in the amount of \$350.00. The rental unit is a basement suite in a 4-plex and one of the landlords resides in an upper suite on the rental property. Neither party has provided a copy of the tenancy agreement.

A move-in and a move-out condition inspection report was completed at the beginning and end of the tenancy, but at move-out, the tenant didn't agree with it so did not sign it and didn't get a copy.

The tenant further testified that the tenant gave notice to the landlords on November 28, 2016 to vacate the rental unit effective December 31, 2016, having paid rent to the end of December. The landlords re-rented the rental unit prior to the end of the month, and the tenant claims half of December's rent back.

The tenant provided a forwarding address in writing on November 28, 2016 and claims double the amount of the deposits, or \$1,400.00. The landlords returned \$400.00 to the tenant, but the cheque was returned for insufficient funds and the tenant is being charged \$7.00 per month by the financial institution for being over-drawn, in addition to \$2.53 interest. A copy of a portion of the tenant's banking ledger has been provided to confirm the \$7.00 per month charge in January, 2017.

The landlords have not served the tenant with an application for dispute resolution claiming against the deposits and have not returned any portion to the tenant.

The tenant claims \$1,757.00, being \$1,400.00 for double the amount of the security deposit and pet damage deposit; \$350.00 for recovery of half of December's rent; and costs related to the charges of the tenant's financial institution for the landlords' N.S.F. cheque.

The first landlord (NS) testified that he is the owner of the rental unit but does not live there; the other named landlord is the owner's property manager as well as tenant.

During the tenancy the tenant paid rent inconsistently and the property manager was trying to work with the tenant.

The tenant moved out on December 9, 2016, and the property manager received the tenant's forwarding address on December 12, 2016.

The tenancy agreement specifies that rent is \$700.00 per month payable to the landlord on the 1st day of the rental period that falls on the last day of each month. On March 17, 2016 the landlords received \$1,480.00 in 2 cheques, being \$350.00 for the security deposit, \$350.00 for the pet damage deposit; and \$730.00 to go toward rent. The tenant usually paid half a month's rent at a time on the 11th and last days of the month. In the landlord's calculations there were rental arrears and the tenant owes the landlords \$575.00. The landlords owe the tenant

\$708.00 for deposits and interest, and the difference is \$133.00 that the landlords owe to the tenant.

The landlord further testified that the property manager sent the tenant a cheque in the amount of \$400.00 without completing the calculations, and the landlord agrees that it was an error on behalf of the landlords that the cheque bounced.

The landlords didn't make an application for dispute resolution because the landlord didn't want to fight over \$133.00.

The rental unit was re-rented for December 22, 2016 and the tenant's mother had paid \$600.00 on December 22, 2016 which was to cover arrears, not December's rent. The landlord has collected \$230.00 from the new tenant.

The second landlord (AS) testified that his intentions were honourable when the \$400.00 cheque was sent to the tenant. The landlord further testified that a landlord has 15 days to write a letter to the tenant claiming the security deposit and pet damage deposit or return the funds to the tenant. Since Christmas was coming, the landlord gave the tenant an offer to pick up the cheque.

The landlord spoke with the tenant often, and talked to the tenant about the accounting showing a rental shortfall in October, 2016.

Analysis

The *Residential Tenancy Act* states that a landlord must return any security deposit or pet damage deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount(s).

In this case, the parties agree that the landlords collected a \$350.00 security deposit and a \$350.00 pet damage deposit, and the tenancy ended prior to the end of December, 2016. The parties disagree as to the date the landlords received the tenant's forwarding address in writing, however, I have also reviewed the move-out condition inspection report which shows a move-out date of December 10, 2016 and an inspection date of December 16, 2016 and contains the tenant's forwarding address. Therefore, I am satisfied that the landlords received the tenant's forwarding address in writing on December 16, 2016.

The landlords have not repaid the deposits and have not made an application for dispute resolution claiming against them, and therefore, I find that the landlords must repay the tenant double the amount, or \$1,400.00.

The landlords do not deny that the cheque sent to the tenant, meant as a partial return of the deposits, was returned N.S.F. I find that the tenant has established a claim for 3 months at \$7.00 per month, or \$21.00.

With respect to the tenant's claim for recovery of half of December's rent, the landlord agrees that the rental unit was re-rented, but also testified that the \$600.00 collected for rent in December from the tenant's mother was to cover arrears of rent, not rent for December, 2016. The tenant was not sure of what the amount covered, and the parties agree that rent is \$700.00 per month. I have reviewed the receipts provided by the tenant and although there is no question that the tenant's mother paid that amount, I am not satisfied that the tenant has established that the landlords have collected twice for the month of December, and the tenant's application for recovery of half a month's rent is dismissed.

In summary, I find that the tenant has established a claim of \$1,400.00 as double recovery of the pet damage deposit and security deposit and \$21.00 for over-draft charges due to the landlord's returned cheque.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,421.00.

This order is final and binding and may be enforced.

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 22, 2017

Residential Tenancy Branch