



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, MNR, MNDC

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The landlord's application is a request for a monetary order for \$1860.51 and a request for recovery of the \$100.00 filing fee. The landlord is also requesting an order to retain the full security deposit of \$850.00 towards the claim.

The tenant's application is a request for a monetary order for \$1700.00 and a request for recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issues are whether or not the landlords or the tenants have established a monetary order against the other, and if so in what amount.

Background and Evidence

The parties agree that a security deposit of \$850.00 was paid on June 13, 2015.

The parties also agree that this tenancy began on July 1, 2015 with a monthly rent of \$1700.00, due on the first of each month.

The parties also agree that there was no move-in inspection report done at the beginning of the tenancy, nor was there a move out inspection report done at the end of the tenancy.

Although the parties do not agree on when the landlord agreed to allow the tenants to deduct \$100.00 per month off the rent, the parties do agree that at some point this occurred.

The landlord testified that he had agreed to a \$100.00 deduction, per month, off of the rent, when there were problems in the rental unit; however as those problems had been rectified, he informed the tenants that the rent deduction would no longer be allowed, as of August 2016, and therefore the tenants were required to pay \$1700.00 rent for the month of August 2016.

The landlord further testified that, although the tenants attempted to pay \$1600.00 rent for the month of August 2016, when he refused to accept that amount no rent was ever paid for the month of August 2016. The landlord is therefore requesting an order that the tenants be held liable for the full August 2016 rent of \$1700.00.

The landlord further testified that the tenants did not vacate the rental unit until September 2, 2016, and therefore he is asking for two day's prorated rent in the amount of \$113.30.

The landlord further testified that the tenants left two mattresses behind at the end of the tenancy, and as a result he had to have those mattresses removed, at a cost of \$47.21.

The landlord is therefore requesting a monetary order as follows:

August 2016 rent outstanding	\$1700.00
Today's September 2016 rent	\$113.30
Removal of mattresses	\$47.21
Filing fee	\$100.00
Total	\$1960.51

The tenants testified that the landlord had reduced the rent to \$1600.00 per month, and they were never informed that it was going to go back up to \$1700.00 per month for the month of August 2016.

The tenants further testified that they attempted to pay \$1600.00 rent to the landlord for the month of August 2016; however the landlord refused to accept that rent. The tenants therefore believe that since it was the landlord's choice to not accept the rent they should not have to pay any further rent.

The tenants testified that they moved out of the rental unit on September 1, 2016, not September 2, 2016, as stated by the landlord, and that all keys were returned to the landlord on September 1, 2016.

The tenants further testified that they did not leave any mattresses behind at the rental unit, as they needed all of the beds they owned, and that the mattresses that were left at the property were there, at the side of the house, when they moved in.

The tenants therefore request that the landlord's full claim be dismissed, and that the landlord be ordered to return double their security deposit.

In response to the tenant's testimony the landlord reiterated that he did inform the tenants that, as of August 2016, he was no longer going to allow them to deduct \$100.00 from the rent, and therefore they were to pay the full \$1700.00.

The landlord further stated that the tenants did not vacate on September 1, 2016, and that he is supplied a text message to the tenants thanking them for returning the keys on September 2 at 5:15 PM.

The landlord further stated that there were no mattresses on the rental property at the beginning of the tenancy, as they had completely cleaned it up, making it ready for the tenants to move in.

Analysis

First of all, I had explained to the tenants at the hearing that the landlord would not be required to return double the security deposit even if an order was issued in their favor, as the landlord had applied for dispute resolution within the 15 day time frame required under the act, and therefore the doubling penalty would not apply.

The parties agree that no rent has been paid for the month of August 2016, and although the parties agree that the landlord refused to accept \$1600.00 for the month of August 2016, this does not absolve the tenants from having to pay August 2016 rent.

The tenants have argued that the rent had been reduced by \$100.00 per month to \$1600.00 and therefore that is the amount that rent should have been for the month of August 2016; however if a landlord had agreed to a \$100.00 deduction from the rent, this is an agreement that the landlord can revoke at any time unless the tenants have an order from an arbitrator at the Residential Tenancy Branch, allowing them to deduct money from the rent. Therefore when the landlord stated that he is no longer allowing the \$100.00 deduction, the tenants were required to pay the full \$1700.00 rent for the month of August 2016.

It is my decision therefore that I will allow the landlords request for the outstanding rent of \$1700.00 for August 2016.

It is also my finding that the landlord has shown "on the balance of probabilities" that the tenants did not vacate the rental unit until September 2, 2016, as stated in the text message, and I therefore allow the landlords request for 2 day's prorated rent, totaling \$113.30.

I will not however allow the landlords claim for removing two mattresses, as it is my finding that the landlord has not met the burden of proving that these mattresses were left there by the tenants. No move-in inspection report, or moveout inspection report was done for this tenancy, and therefore it is basically the landlord's word against that of the tenants as to whether or not those mattresses were on the property at the beginning of the tenancy. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondents, that burden of proof is not met.

Having allowed the majority of the landlord's claim I will allow the landlords request for recovery of his \$100.00 filing fee.

Therefore the total amount of the landlord's claim that I have allowed is as follows:

August 2016 rent outstanding	\$1700.00
September 2016 prorated rent	\$113.30
Filing fee	\$100.00
Total	\$1913.30

Since the amount of the landlord's claim that I have allowed, exceeds the amount of the security deposit held, I will not allow the tenants request for return of their security deposit, or recovery of their filing fee.

Conclusion

Pursuant to section 67 and 72 of the Residential Tenancy Act, I have allowed \$1913.30 of the landlords claim, and I therefore order that the landlord may retain the full security deposit of \$850.00, and I have issued a monetary order for the tenants to pay \$1063.30 to the landlords.

Pursuant to section 62 of the Residential Tenancy Act, the tenants claim is dismissed, in full, without leave to reapply.

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