



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

One of two landlords, "landlord KT," did not attend this hearing, which lasted approximately 53 minutes. Landlord DT ("landlord") and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to represent landlord KT, also named in this application, as an agent at this hearing.

The tenants confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to correct the unit number for this rental property. The landlords indicated a unit number for the mailing address of the property on their application, not the physical address. I included the physical address, as both parties consented to this amendment.

At the outset of the hearing, both parties agreed that I had jurisdiction to hear this application as it was not excluded by section 4 of the *Act*. Both parties agreed that although the landlords had guests stay at the rental property as part of an "air b'n'b" arrangement, the tenants did not fall into this category, nor were they occupying the

rental unit for vacation or travel accommodation. Both parties agreed that the tenants were renting this unit for residential purposes on a month-to-month basis. Accordingly, I heard the claim as I found that I had jurisdiction to do so.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenants' security deposit?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on August 12, 2016. Monthly rent in the amount of \$500.00 was payable on the first day of each month. A security deposit of \$250.00 was paid by the tenants and the landlords continue to retain the deposit in full. Both parties signed a written tenancy agreement and a copy was provided for this hearing.

The landlord testified that the police removed the tenants from the property on September 15, 2016 and they were not permitted to return. The tenants agreed that they were forced to leave the property by the police but claimed that they vacated the rental unit on September 28, 2016, when their family members finished removing their belongings from the property. Both parties agreed that no move-in condition inspection report was completed for this tenancy. The tenants stated that no move-out condition inspection report was completed, while the landlord said that it was completed in the tenants' absence. The landlord did not provide a copy of this report for the hearing. The landlord testified that she did not provide the tenants with at least two opportunities to complete a move-out condition inspection report. The landlord agreed that she did not have written permission to keep any amount from the tenants' security deposit and that the landlords' application to keep the deposit was filed on December 27, 2016. Both parties agreed that they attended a previous hearing at the Residential Tenancy Branch ("RTB") on December 13, 2016, after which a decision of the same date was

issued by a different Arbitrator. The file number for that hearing appears on the front page of this decision. That hearing was scheduled to hear the tenants' application for a monetary order and the return of their security deposit. Both parties agreed that the previous decision provided the tenants with leave to reapply for the return of their security deposit, after the Arbitrator found that the tenants provided a written forwarding address to the landlords by way of the tenants' application. The previous decision stated that the landlords could either return the deposit to the tenants or file a claim within 15 days of the date of the hearing on December 13, 2016. The landlord confirmed that she did not return the deposit but rather made a claim against it in this current application, filed within 15 days on December 27, 2016.

The landlords seek a monetary award of \$3,250.00 plus the \$100.00 filing fee paid for this application.

The landlords seek \$1,250.00 for ten nights of reservations at \$125.00 per night, that were cancelled because the tenants allegedly scared people away by fighting and making negative comments about the landlords and the rental property. The landlord did not provide the names of the people that cancelled their reservations, citing privacy concerns, and later claimed that it was only one person who cancelled two weeks of reservations. The tenants dispute the landlords' claim, stating that people were scared away because they overheard the landlords' rude behaviour towards the tenants and the landlords' non-compliance with the *Act*.

The landlords seek \$2,000.00 for damages that they say the tenants caused by kicking in a wall in the bedroom and punching a hole in the front door of the rental unit. The landlords provided a quotation, dated December 27, 2016 and "valid until January 31-17" for the repairs. The quote indicates \$1,000.00 for "bedroom-only supplies," which the landlord said was for the new panel in the bedroom. It also indicates \$600.00 for six hours of labour at \$100.00 per hour and \$400.00 to replace the front door. The total quote is for \$2,000.00. The tenants dispute this claim, stating that they did not cause the above damages. They claimed that the landlords advised them that there was water damage dating back to the 1980's in the rental unit, the landlord made the hole in the door when she was fighting with the tenants, and they could not see the damages in the landlords' black and white photographs. They testified that there were no move-in or move-out condition inspection reports to show the condition of the unit. They also explained that the company supposedly used by the landlords to repair the damages was located in another province.

Analysis

Burden of Proof

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Damages and other Losses

I dismiss the landlords' claim for \$1,250.00 in cancelled reservations at the rental property. I find that the landlords failed to produce documentary evidence to support their claim. They did not provide documents confirming that they charge \$125.00 per night for guests to stay at the property. The landlord agreed that she had a website with all the information for the property on there, including the nightly rate, yet she failed to produce documentation from the website. The landlord also failed to provide the dates for the ten nights that she said the reservations were cancelled. She initially stated that it was for multiple people cancelling reservations and then claimed that it was only one. She further claimed that it occurred in the two week period after the tenants began fighting but then claimed that it happened between September 7 and 15, which is not a ten-day period.

I dismiss the landlords' claim for \$2,000.00 for repairs to the cabin. The landlords failed to provide a receipt for this claim. They only provided a quotation from December 27, 2016, the day they filed their application. It was from a company in a different province, that the landlord said came and stayed with her in October or November 2016. When I asked her why the quote indicated December 27, 2016, not October or November, she said she did not know why. When I first questioned the landlord about this claim, she stated that it was for furniture stole by the tenants. She then claimed that it was not. The landlords also failed to produce move-in and move-out condition inspection reports to show the condition of the above items.

As the landlords were completely unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee paid for this application.

Security Deposit

Since the Arbitrator at the previous hearing dismissed the tenants' application to recover their security deposit with leave to reapply, I find that I have jurisdiction to deal with the tenants' security deposit at this hearing.

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

As per the previous RTB decision, which made findings of fact, the landlords received the tenants' forwarding address by way of the tenants' application at the previous hearing. I find that the landlords filed a claim against the tenants' security deposit on December 27, 2016, which is within 15 days of the hearing on December 13, 2016. This was as per the direction provided by the previous Arbitrator. The landlords' right to file an application against the deposit for damages was extinguished because they did not complete a move-in condition inspection report, nor did they offer two opportunities to complete a move-out inspection report, as required by sections 24 and 36 of the *Act*. However, the landlords were entitled to file a claim for other losses aside from damages, which they did when they asked for a loss of revenue due to cancelled reservations of \$1,250.00 in this application, which is in excess of the \$250.00 security deposit. Therefore, I find that the tenants are not entitled to double the value of their security deposit.

The landlords continue to hold the tenants' security deposit, totalling \$250.00. No interest is payable on the deposit during the period of this tenancy. As per Residential Tenancy Policy Guideline 17, since the landlords applied to retain the deposit, I am also required to deal with its return to the tenants even though they have not filed an application. Accordingly, I order the landlords to return the tenants' entire security deposit of \$250.00, to the tenants within 15 days of receiving this decision.

Conclusion

I order the landlords to return the tenants' entire security deposit of \$250.00, to the tenants within 15 days of receiving this decision.

I issue a monetary order in the tenants' favour in the amount of \$250.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlords' entire application is dismissed 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: May 30, 2017

Residential Tenancy Branch