



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

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

- a monetary order for compensation for unpaid rent, damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The co-tenant RR (the "tenant") confirmed she represented both named co-tenants. The co-landlord MK (the "landlord") confirmed he represented both landlords.

As both parties were in attendance I confirmed that there were no issues with service of the landlords' application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's application and their respective evidence.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenants have paid a portion of the claimed amount and the monetary award they are seeking is \$1,300.00. Pursuant to section 64(3)(c) of the *Act* and Rule

4.2 of the Rules of Procedure I amend the landlords' Application to decrease the landlords' monetary claim from \$1,341.27 to \$1,300.00.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain all or a portion of the security deposit for this tenancy?

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

Background and Evidence

This periodic tenancy began in June, 2011. The monthly rent was \$1,029.00 payable on the first of each month. A security deposit of \$500.00 was paid at the start of the tenancy and is still held by the landlords.

The tenant gave notice to the landlord on January 29, 2017 that they would vacate the rental unit on February 28, 2017. The landlord immediately listed the rental unit as available March 1, 2017 at a monthly rent of \$1,800.00.

The landlord testified that the tenant unreasonably interfered with his attempts to show the rental unit to prospective tenants as well as his ability to perform repairs inside the unit. The landlord submitted into written evidence copies of the text message conversations with the tenant attempting to schedule showings. The landlord said that the tenant would not make herself available when the landlord wished to arrange showings or maintenance work.

The landlord said that as a result of the tenant's uncooperative behaviour he was not able to get a new tenant for March 1st. The landlord said that a new tenant was found who took possession on April 1, 2017 at a monthly rent of \$1,500.00.

There was no condition inspection report prepared at either the start or the end of the tenancy. The tenant said that she provided her forwarding address to the landlord in writing on or about February 28, 2017. The landlord disagreed and believed that the date he received the forwarding address would have been on or about March 9, 2017.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must 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 landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

The landlords have filed the present application on March 15, 2017. The parties gave conflicting evidence on whether the tenants provided a forwarding address in writing on February 28, 2017 or March 9, 2017. In either event I find that the landlords filed the application to retain the security deposit within the 15 days provided under the *Act*.

However, the parties testified that no condition inspection report was prepared at either the start or the end of the tenancy. The parties said that a move-in inspection was performed but based on the evidence provided, it appears that inspection consisted solely of a visual walkthrough.

Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
...
(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I find that the landlords have extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the evidence before me, I find that the landlords have extinguished their right to the tenants' security deposit. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants

are entitled to a \$1,000.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that the landlords have submitted insufficient evidence to conclude that the tenants violated the *Act*, regulations or tenancy agreement giving rise to any loss on the landlords' part. I do not find that the evidence submitted shows the tenants unreasonably denying the landlords access to the rental unit. Based on the evidence it appears that the parties were trying to find a reasonable time for showings when the tenant would be present. The tenants provided their availability but I find there is insufficient evidence to conclude they were prohibiting access.

Pursuant to section 29 of the *Act* and Policy Guideline 7, while there are restrictions on a landlord's right to enter a rental unit, where a valid notice of entry has been provided there is no requirement that the tenant be present at the time of entry. The landlords could have accessed the rental unit at a time that the tenants were not present provided he gave valid notice. I find there is insufficient evidence to show that the tenants unreasonably denied the landlords access to the rental unit.

Furthermore, I find there is insufficient evidence that the landlords suffered any damage or loss. The undisputed evidence of the landlord is that he found a new tenant who took possession of the rental unit on April 1, 2017 at a monthly rent of \$1,500.00, increasing the rental revenue by over 50%. The landlord claims lost rental revenue of \$1,800.00 for the month of March, 2017 as that was the monthly rent he was seeking. Based on the evidence I do not find that the landlords have suffered a loss due to the tenants' violation of the *Act*, regulations or tenancy agreement. I dismiss the landlords' claim.

As the landlords' application was unsuccessful the landlords are not entitled to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,000.00 against the landlords. The tenants are provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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.

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: August 14, 2017

Residential Tenancy Branch