



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNR, MNSD, FF
 Tenants: CNC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders. The tenants also sought to cancel a notice to end tenancy for cause.

The hearing was originally conducted via teleconference on June 28, 2017 and was attended by one of the landlords and the tenants' legal counsel, AB. The hearing was adjourned and reconvened on September 8, 2017 and attended by the same landlord; the tenant KD and her legal counsel JN.

The original hearing was adjourned for reasons set forth in my Interim Decision dated June 28, 2017. For reasons outlined in that decision I dismissed the tenants' Application for Dispute Resolution in its entirety.

Also for reasons outlined in the Interim Decision, I declined to accept jurisdiction over the bulk of the landlord's claim for damage to the property. I did allow for the landlord to submit an updated Monetary Order Worksheet outlining how they would change their claim in accordance with my findings and orders in the Interim Decision. The landlord did not provide any additional submissions.

In that decision I wrote:

"However, I will allow the landlords to present evidence and testimony related to any losses for repairs/cleaning; unpaid rent; or lost revenue that they believe they suffered as a result of a violation of the Act, regulation or tenancy agreement. I may determine that some claims are within my jurisdiction. To this end, I will order the landlord to submit a breakdown of any claims beyond unpaid rent including a new Monetary Order Worksheet, pursuant to the orders listed below."

I also note the referred to "orders listed below" were:

"Based on the above:

- **I order** the tenants' Application for Dispute Resolution is dismissed;
- **I order** the reconvened hearing will deal solely with the landlords' Application for Dispute Resolution with the restrictions noted above;
- **I order** this hearing will be reconvened on the date and time provided in the attached Notice of Hearing Documents;

- **I order** that this not an opportunity for landlords to amend their existing Application for Dispute Resolution, except as noted above;
- **I order** that this not an opportunity for either party to submit an additional Application for Dispute Resolution to be crossed or joined with the Application for Dispute Resolution currently before me;
- **I order** that this is not an opportunity for either party to submit additional evidence with the exception that the landlord must submit to the Residential Tenancy Branch a breakdown of any claims beyond unpaid rent including a new Monetary Order Worksheet and serve a copy of this to the tenants."

At the outset of the reconvened hearing I confirmed with the landlord that she had not submitted any additional documentation in accordance with my orders from the Interim Decision. She stated she did not understand that she was supposed to submit any additional information. The landlord confirmed she did not contact the Residential Tenancy Branch for any clarification or direction.

As the landlord has failed to follow the directions outlined in the Interim Decision of June 28, 2017 and provide any clarity on the issues related specifically to the damage caused by the tenants that was related solely to the tenancy and not the work they contracted with the tenants to complete, I have not heard the landlord's claim for any damage to the residential property. As a result, I find the landlord is at liberty to file a separate and new claim for such damage or loss within any required restrictions put forth in the *Residential Tenancy Act (Act)*.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; 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 38, 45, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement for a 1 year fixed term tenancy beginning on July 1, 2016 for a monthly rent of \$2,550.00 due on the 1st of each month with a security deposit of \$1,275.00 and a pet damage deposit of \$1,275.00 paid. The parties agreed the tenants moved out of the rental unit in December 2016.

The parties agreed in the hearing that the tenants had agreed to complete some renovations to the rental unit during the tenancy. The agreement on renovations and compensation was not made in writing. The landlord submitted that they had originally agreed the tenants would be compensated in the amount of 1 ½ month's rent or \$3,825.00 but later agreed to an additional \$1,275.00 in compensation. The landlord submits this is the equivalent of 2 months' rent and this was provided to the tenants as covering the rent for July and August 2016.

The landlord submitted that the tenants did not pay rent on December 1, 2016 after repeated attempts by the landlord to view the renovation work that was denied by the tenants. The landlord submitted that despite agreeing to the scope of work and the compensation of 2 months' rent the tenants were seeking more compensation for expenses that the landlord had not authorized.

The landlord submitted that they went to the property on December 6, 2016 and that the tenants informed them that they would move out and that the landlord could keep the security deposit and pet damage deposit for rent for December 2016.

The tenant submitted that they had to purchase supplies for the renovation work that they were completing for the landlord and the landlord was refusing to reimburse them for. As such, the tenant does not believe they owe the landlord any money for any rent. The tenant submitted that while they were moving things out of the rental unit during the month of December 2016 the landlords changed the locks and they could not gain access until the landlord met with them to let them in to retrieve the last of their belongings. The tenant submitted that even if they wanted to stay in the unit the shower was not usable and so they wouldn't have been able to stay, as it was not suitable for occupation.

The landlord provided in her written submissions that she received the tenants' forwarding address on January 3, 2017. The landlord provided a copy of the letter dated January 3, 2017 that clearly asks the landlords to return both the security deposit and the pet damage deposit within 15 days.

The landlord has submitted copies of text messages between the parties throughout the tenancy including one dated December 11, 2016 where the landlord wrote: "Kayla, you agreed to move out and we keep the deposit...." The landlord submits this is evidence that tenants agreed to the landlord keeping the deposits.

Analysis

Section 26 of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Such reasons include an overpayment of a security deposit or the costs of emergency repairs pursuant to Section 33 of the *Act*, or as ordered by the director.

Section 45(2) of the *Act* states a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(3) states if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. Section 45(4) stipulates a notice to end a tenancy given under this section must comply with section 52.

I find that the parties did have a dispute related to renovations the landlord had contracted with the tenants to complete. However, I find there is no evidence that any aspect of this dispute gave the tenants the right to withhold the payment of rent for the month of December 2016 and as such, I find the landlord is entitled to compensation in the amount of \$2,550.00.

Section 21 of the *Act* does not allow a tenant to apply a security deposit or a pet damage deposit to rent unless they have written consent from the landlord to do so. I find that neither party has provided any evidence that the landlord gave written consent.

In addition, pursuant to Section 45(2) I find the earliest the tenants could have ended the tenancy by issuing a notice to the landlord of their intent to do so was June 30, 2017 or the end of the fixed term, unless the ended the tenancy in accordance with Section 45(3).

Section 45(3) requires that the tenants provide a written notice to the landlord that they are in breach of a material term of the tenancy; give the landlord time to correct the breach and then if the landlord fails to do so the tenants may end the tenancy at that time. There is no evidence before me from either party that the tenants provided such a written notice to the landlords.

Furthermore, I find the dispute between the parties relates to renovations made by the tenant and compensation provided from the landlords for those renovations and not related at all to any material term of the tenancy agreement. As such, I find the landlords were not in breach of a material term of the tenancy agreement and the earliest the tenants could have ended the tenancy remains June 30, 2017. As a result, I find the tenants are responsible for the payment of rent for the month of January 2017, in the amount of \$2,550.00.

Based on the tenant's testimony that the rental unit was not suitable for occupation when they moved out of the rental unit, I find it is reasonable that the landlord could not re-rent the unit for the month of January 2017. Therefore, I find, for the month of January 2017 the landlord is not required to take steps to mitigate this loss.

As noted in the Interim Decision of June 28, 2017 the tenants' Application for Dispute Resolution is dismissed. However, as the landlords had sought to retain the security and pet damage deposit I have determined the disposition of those deposits as follows.

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.

As the landlord confirmed in her written submissions that she received the tenants' forwarding address on January 3, 2017 I find the landlords were required to return the deposits to the tenants or file a claim against them no later than January 18, 2017 unless they had written permission from the tenants that they could retain any amounts from the deposits.

Despite the landlords' submissions of text messages I am not satisfied the landlord obtained, in writing, permission from the tenants to retain either one of the deposits. I find that a text written by the landlord stating that the tenant agreed to allow the landlord to retain the deposit is not evidence that the tenants agreed to it but rather it is statement by the landlord only.

As a result, I find the landlord had not complied with the requirements set forth in Section 38(1) and as such the tenants are entitled to double the amount of both deposits pursuant to Section 38(6).

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$5,200.00** comprised of \$5,100.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of \$5,100.00 comprised of \$2,550.00 double the security deposit and \$2,550.00 double the pet damage deposit.

I order the landlord may deduct double the amounts of the security deposit and pet damage deposit held in the amount of \$5,100.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$100.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords 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: September 18, 2017

Residential Tenancy Branch