



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application filed April 11, 2017 under the *Residential Tenancy Act* (the "Act") seeking compensation for damage or loss, authorization to retain the security deposit, and recovery of the application filing fee.

An agent for the landlord attended the hearing, as did both of the tenants. The parties were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, and to make submissions.

At the outset of the hearing the landlord's agent advised that the landlord sought only authorization to retain the security deposit because the landlord did not believe that it would be able to collect any additional amounts. The tenants did not object. Accordingly, the landlord's application is amended, and is limited to a request for authorization to retain the security deposit.

Issue(s) to be Decided

Is the landlord entitled to retain some or all of the security deposit?

Background and Evidence

A copy of the tenancy agreement was in evidence. This tenancy began on June 1, 2003. Monthly rent at the time that the tenancy was frustrated was \$746.00, due on the first of the month. An additional \$20.00 per month was paid for storage. A security deposit of \$287.50 was paid at the beginning of the tenancy and remains in the landlord's possession.

It was agreed that the tenancy was frustrated as the result of a fire on February 8, 2017, and that the tenants were refunded the balance of their February rent as a result. A letter from the landlord to the tenants dated February 14, 2017 stating as much was

included in evidence. That letter also says: "If you have not already done so, please contact me to arrange a date and time to move out your furniture."

The agent testified that after air quality testing the tenants were authorized to re-enter the rental property and retrieve their belongings. The landlord asked all tenants to remove their possessions and provided dumpsters in order to facilitate the process.

The agent further said that the tenants left furniture and garbage and the contents of their refrigerator behind, which she described as a "disgusting mess." An invoice dated April 21, 2017 for "hauling and junk removal" for the tenants' unit in the amount of \$495.97 was in evidence. The landlord also submitted photographs of the bedroom, living room, kitchen, and storage locker of the rental unit, showing furniture, boxes, and kitchen supplies left behind.

Also in evidence was a condition inspection report indicating a move-out inspection was performed on February 21, 2017. In Part V, the landlord has written: "Tenant did not move out garbage, furniture, clothes, dishes and other belongings from unit. Tenant moved out Monday Feb 20 and did not come back for rests of items. Left message with [tenant] and spoke with [other tenant]. Advised them need to remove rest of items or will not get deposit back." [Reproduced as written.]

The agent testified that the condition inspection report was completed without the tenants' involvement because the landlord considered that the unit had been abandoned. She also said that the report was provided to the tenants along with the other materials provided by the landlord in support of its application. The tenants provided the landlord with their forwarding address in writing on April 10, 2017 by letter.

In response to my question, the landlord's agent stated that the rental building is still standing and the owner has not yet decided what will become of it. Also in response to my question, the agent said that the landlord did not communicate its expectations around the condition of the rental units at vacancy in writing because the doors of the units had been compromised by the fire and correspondence could not be posted.

The tenants testified that they understood that they were asked only to salvage what they could of their belongings and were not required to clear the unit out completely. They further testified that a representative of the restoration company involved told them not to worry about their possessions because the building would be gutted.

The tenants also testified that the landlord had removed the garbage bins by the date they left for another rental unit in another town, and that they were limited in what they could move. They further said that the belongings left behind were smoke damaged. The tenants' evidence included photographs of the rental unit showing substantial smoke damage or discoloration. The tenants also testified that they were concerned about being in the unit because of possible toxicity.

Lastly, the tenants said that at a February 15, 2017 meeting between the landlord's agent and all of the tenants in the rental building, the agent advised them that there was no need to do a condition inspection at move-out, and that all of the tenants would be getting their security deposit back.

Analysis

This is the landlord's application and the landlord must therefore establish on a balance of probabilities that it is entitled to retain the security deposit.

I accept that the tenancy ended on February 8, 2017 as a result of frustration. I also accept the tenants' testimony, which the agent did not challenge, that the landlord advised all of the tenants in the building that a move-out condition inspection was not necessary in the circumstances.

By its own admission, the landlord did not offer these particular tenants two opportunities to inspect the unit as required by s. 35(2) of the Act. The fact that the landlord did not offer the tenants these opportunities is consistent with the fact that it did not consider an inspection was necessary. It is also consistent with the fact that in its letter of February 14 the landlord simply asks the tenants be in touch regarding a date and time to move out their furniture.

The landlord submitted that it conducted the move-out report without the tenants because it considered the unit had been abandoned. However, the landlord was in contact with the tenants before they left, and the opportunity for arranging a condition inspection was then. The landlord did not attempt to arrange an inspection either before or after February 21.

If the landlord had considered that the condition of the units was important, it could have communicated this clearly, but it did not do so, and I reject the landlord's submission that it was unable to communicate its expectations in writing. The landlord

communicated in writing when it wrote the tenants its letter of February 14, 2017 and could have done so again.

I find that the landlord waived its ability to claim against the tenants for the condition of the unit after it told them that a move-out inspection was not necessary and that their security deposits would be returned.

I further find that the landlord extinguished its right to claim for damages to the rental unit against the security deposit by failing to offer the tenant two opportunities for a move-out inspection, as per sections 35 and 36 of the Act.

I do not accept that landlord's cost was reasonably incurred in the circumstances in any event. The landlord's agent testified that no decision has been made with respect to the building as a whole. The agent did not establish that the removal of the remaining contents of the tenants' suite was reasonably necessarily in light of the fact that the building may be demolished.

Conclusion

The landlord's application is denied.

Pursuant to Policy Guideline 17, I order the landlord to return the security deposit, plus interest, to the tenants and I grant the tenants a monetary order for \$297.68 (\$287.50 + \$10.18 interest).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act and is final and binding under s. 77 unless otherwise indicated in the Act.

Dated: September 18, 2017

Residential Tenancy Branch