



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, conducted by a conference call, dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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 tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to speak, present evidence, provide affirmed testimony and call witnesses. The landlord RR (the "landlord") confirmed he spoke for both named co-landlords.

As the parties were in attendance I confirmed service. The parties confirmed receipt of one another's applications for dispute resolution and evidence. In accordance with

sections 88 and 89 of the *Act*, I find that the parties were served with their respective application packages.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damages and loss as claimed? Are the landlords entitled to retain all or a portion of the security deposit for this tenancy? Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to a monetary award for damages or loss as claimed? Is either party entitled to recover the filing fee for this application from the other?

Background and Evidence

The parties agreed on the following facts. The tenant paid the landlord a security deposit of \$900.00 on April 15, 2017. The parties intended for the tenant to take occupancy of the rental unit on May 1, 2017. The monthly rent was to be \$1,800.00 payable on the first of each month. No written tenancy agreement was signed by the parties.

Prior to moving into the rental unit the tenant arranged for furniture to be delivered to the rental unit. The tenant submitted into written evidence receipts for some of the furniture she said was purchased and delivered. The tenant testified that she attended at the rental unit on April 30, 2017 and found that there was unfinished construction making the suite uninhabitable. The tenant said that she was aware that work was being done to the rental unit prior to May 1st but the agreement with the landlord was that all construction and renovation was to be completed. The tenant said that the state of the rental unit was unsafe and unlivable. The tenant did not provide details but said that there was equipment and tools left in the suite. The landlord disputes the tenant's evidence and states the rental unit was ready to be occupied.

The tenant informed the landlord by text message on April 30, 2017 that she would not be moving into the rental unit. The tenant gave the landlord a forwarding address in writing on May 29, 2017 and requested a return of the security deposit. The parties confirmed that no condition inspection report was prepared for this tenancy. The tenant testified that she did not provide written authorization to the landlord that they may retain the security deposit.

The landlord said that after the tenant gave notice he sought another tenant and was able to rent for June, 2017. The landlord said that he suffered a loss of \$1,800.00 in rent for the month of May, 2017. The landlord also states that he needed to change the locks to the rental unit as the tenant failed to return the keys. The landlord said that the cost of replacement locks is \$50.00.

The tenant disputes the landlord's claim and asserts that because she did not sign a written tenancy agreement she is not obligated to pay any rent. In any event she said that the tenancy did not occur due to the landlord's failure to provide her with a habitable rental unit.

The tenant claims double the amount of the security deposit paid for this tenancy and an additional \$300.00 for the cost of furniture she said she could not retrieve from the rental unit. The tenant submitted into written evidence a copy of the invoice for the furniture she said she could not get back. In addition the tenant submitted into written evidence copies of text message conversations with the landlord requesting a return of the security deposit.

Analysis

Section 1 of the *Act* defines a tenancy agreement as:

an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit

I find that there was an agreement entered and agreed to by the parties when the tenant paid a security deposit of \$900.00 on April 15, 2017. The parties testified that they were aware that the tenant would take possession of the rental unit and pay monthly rent in the amount of \$1,900.00. The tenant has filed the present application for return of double the security deposit under the *Act*, which implies that she understands that this matter is a tenancy. I find that there was a tenancy agreement and the parties were bound by the terms of the *Act*, regulations and the agreement.

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).

I accept the evidence of the parties that the tenant did not provide valid written authorization that the landlord may retain any portion of the security deposit. I find that the landlord's application for dispute resolution filed on May 9, 2017 seeks a relief for damages and compensation but does not make an application to keep all or a part of the security deposit.

Furthermore, section 24 of the Act sets out that if the landlord does not prepare a condition inspection report or fails to provide the tenant with 2 opportunities to participate in an inspection, their right to claim against the security deposit is extinguished.

I accept the parties' evidence that no condition inspection report was prepared for this tenancy. Consequently, pursuant to section 36(2) of the Act I find that the landlords have extinguished their right to claim against the security deposit.

Based on the undisputed evidence before me, I find that the landlords have failed to return the tenant's security deposit in full. I accept the tenant's 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 tenant is entitled to a \$1,800.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

The parties testified that the tenant failed to pay rent for the month of May, 2017 and provided notice to end the tenancy on April 30, 2017.

A tenant must pay rent when it is due, whether or not the landlord complies with the *Act*, regulations or tenancy agreement pursuant to section 26(1) of the *Act*. Section 45 of the *Act* explains that a tenant may end a periodic tenancy by giving the landlord notice on a date not earlier than one month after the date the landlord receives the notice.

I find that an oral tenancy agreement was created by the parties on April 15, 2017. Under this tenancy agreement the tenant was obligated to pay \$1,800.00 rent by May 1, 2017. I find that the tenant gave notice to the landlord of their intention to end the tenancy by their text of April 30, 2017. As the tenant gave notice of their intention to end the tenancy on April 30, 2017 the effective date of the end of tenancy was May 31, 2017. Pursuant to the tenancy agreement the tenant was still obligated to pay the full

May rent of \$1,800.00 by May 1, 2017. I accept the evidence of the parties that the tenants failed to pay the full rent on that date.

Section 67 of the *Act* states, if damage or loss results from a party not complying with this Act, the regulations or a *tenancy agreement*, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that a violation of the tenancy agreement occurred by the tenant who failed to pay the full rent owing on May 1, 2017. Therefore, the landlord is entitled to a monetary award in the amount of \$1,800.00, the equivalent of one month's rent. I issue a monetary award in that amount.

Section 67 of the *Act* also 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 tenant claims \$300.00 for the cost of the furniture she said was delivered to the rental unit and not recovered. I find there is insufficient evidence to show that the loss of the furniture was due to the landlords' violation of the Act, regulations or tenancy agreement. In the copies of the text messages submitted into written evidence by the tenant she informs the landlord "you are free to garbage it as we bought it for this unit and we don't need it now". In addition there are messages arranging for pick-up of the furniture. I find there is insufficient evidence to show that the tenant suffered a loss as a result of the landlord's actions or negligence. Consequently, I dismiss this portion of the tenant's claim.

The landlord claims \$50.00 for the cost of replacing the locks on the rental unit. I find there is insufficient evidence in support of the landlord's claim. The landlord initially was uncertain of what the \$50.00 charge was for, did not submit written evidence in support of this portion of the claim and could provide little details of how this loss arose. As I find there is insufficient evidence in support of this portion of the claim it is dismissed.

As neither party was entirely successful I decline to issue an order for recovery of the filing fees.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to deduct their monetary award for unpaid rent of \$1,800.00 from the tenant's equivalent award of \$1,800.00 for double the security deposit.

Conclusion

As the monetary awards awarded to the landlords and the tenant effectively cancel each other out the parties are not obligated to make any payment to one another.

The balance of both the tenant's and the landlords' applications are dismissed.

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: November 16, 2017

Residential Tenancy Branch