



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for damage to the unit, site or property; a monetary order for unpaid rent or utilities; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

Both landlords attended the hearing and each gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. One of the landlords testified that the tenant was served with the Landlord Application for Dispute Resolution and notice of this hearing on June 23, 2017 by registered mail to the forwarding address provided to the landlords by the tenant. The landlords were permitted to provide proof of such service after the hearing concluded. I have now received a Canada Post cash register receipt bearing that date and a Registered Domestic Customer Receipt addressed to the tenant, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence provided by the landlords has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?

- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The first landlord (HD) testified that this month-to-month tenancy began on October 6, 2015. Rent in the amount of \$1,800.00 per month was payable on the 1st day of each month and there are no rental arrears. On September 20, 2017 the landlords collected a security deposit from the tenants in the amount of \$857.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a single family dwelling.

A copy of the tenancy agreement has been provided as evidence for this hearing which names 2 tenants, and the landlord testified they were a couple. However the wife contacted the landlords saying she was moving out with the kids and the husband remained in the rental unit until June 2, 2017, having signed a Mutual Agreement to End Tenancy effective June 1, 2017. On June 6, 2017 the tenant provided a forwarding address to the landlords by text message but has not responded to any messages of the landlords and has not picked up the hearing package sent to that address by registered mail.

No move-in or move-out condition inspection reports were completed by the parties, however it was previously the home of the landlords, and this was the first tenancy. The landlords took photographs prior to the tenancy, which have been provided as evidence for this hearing.

The landlord further testified that the tenant left damages and garbage throughout the rental property, and did not clean the rental unit at the end of the tenancy. A letter signed by the tenant has also been provided for this hearing which allows the landlords to keep the costs of removing garbage from the security deposit.

The landlords have provided a Monetary Order Worksheet setting out the following claims:

- \$210.00 for dumping fees and labor;
- \$223.79 for dump fees by weight;
- \$350.00 for cleaning;
- \$8.29 for cleaning supplies;
- \$299.18 for a water/sewer/garbage utility bill;
- \$89.75 for another water/sewer/garbage bill;
- \$105.00 for carpet cleaning;
- \$10.49 for printing photographs for this hearing; and

- \$100.00 for the filing fee.

The landlords' total claim is \$1,396.50.

The landlord testified that there were 6 truck loads in total of garbage taken from the rental unit which took 3 days to complete. It included raw meat, other garbage and empty alcohol bottles. The tenant had left raw meat on the kitchen floor in a pot that had gone bad and was infested with worms. The cleaner didn't have bleach, and the landlord had to go to purchase some due to the raw meat left in the rental unit. Receipts have been provided for dumping fees and labor; another 5 receipts for dumping fees by weight, cleaning costs by a cleaning company, bleach, carpet cleaning and printing photographs.

The landlords have also provided a copy of a water/sewer/garbage bill covering the period from December 1, 2016 to April 19, 2017 which has not been paid by the tenant. The second bill amounting to \$89.75 has not been provided for this hearing, however the landlord testified that the landlords have received it and it runs from April 20 to May 31, 2017. The tenancy agreement states that garbage collection is included in the rent, however the landlord testified that it meant bins were provided. The utility bill provided shows that the portion that applies to garbage collection is \$39.24.

The second landlord testified that when the two tenants resided in the rental unit, the tenancy was fine, however the wife moved out on or about April 1, 2017.

Analysis

Firstly, the *Residential Tenancy Act* puts the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed and the regulations specify how that must be done. If a landlord fails to do so, the landlord's right to make a claim against the security deposit for damages is extinguished. The landlords did not do so in this case, and therefore I find that the landlords' right to claim against the security deposit for damages is extinguished.

However, the landlords' right to make a claim for damages is not extinguished. In order to be successful in such a claim, the onus is on the landlords to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenant's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlords made to mitigate any damage or loss suffered.

I have reviewed the receipts and other evidentiary material provided by the landlords, and I in the absence of any evidence or testimony from the tenant, I am satisfied that the landlords have established the following:

- \$210.00 for dumping fees and labor;
- \$223.79 for dump fees by weight;
- \$350.00 for cleaning;
- \$8.29 for cleaning supplies; and
- \$105.00 for carpet cleaning.

Since the tenancy agreement specifies that garbage collection is included in the rent, I am not satisfied that the landlords have established a claim against the tenant for garbage collection. The utility bill provided in the landlords' evidentiary material sets garbage collection at \$39.24 of the \$299.18 charge. Therefore, I find that the landlords have established the difference of \$259.94. I do not have a copy of the second utility bill, and although I have no reason to disbelieve the landlord, I have no idea how much of that bill is for garbage collection, and I decline to order the tenant reimburse the landlords.

The *Residential Tenancy Act* provides for recovery of a filing fee but not for recovery of costs associated with serving documents or preparing for a hearing, and therefore the landlords' claim for the cost of providing photographs for this hearing is dismissed.

The landlords currently hold a security deposit in trust in the amount of \$857.00 and have received written consent of the tenant to keep the amount of costs the landlords incur for garbage removal, but the letter is silent on the amount. The *Act* requires a landlord to return a security deposit or pet damage deposit in full to a tenant within 15 days of the later of the date the landlord receives the tenant's forwarding address in writing or the date the tenancy ends, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount of the deposit(s).

In this case, the landlord testified that the tenant provided a forwarding address by text message but has not responded to messages or collected registered mail sent to that forwarding address. I am not satisfied that a text message suffices as giving a forwarding address in writing, particularly where the tenant does not collect mail at that address. Therefore, I find that the landlords have not received the tenant's forwarding address in writing for the purposes of Section 38 of the *Residential Tenancy Act*.

Since the landlords have been partially successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

I order the landlords to keep the \$857.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords as against the tenant for the difference in the amount of \$400.02.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$857.00 security deposit and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$400.02.

This order is final and binding and may be enforced.

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: December 12, 2017

Residential Tenancy Branch