



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAVEN PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on September 26, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit and pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant C.K. and a witness, J.D., attended the telephone conference hearing at the appointed date and time. The Landlord was represented at the hearing by A.G., an agent. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Landlord confirmed receipt of the Application package and subsequent documentary evidence. No issues were raised with respect to service or receipt of these documents. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*. The Landlord did not submit documentary evidence in response to the Application.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were advised to refer me to any documentary evidence upon which they wished to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties agreed the tenancy began on September 1, 2011. The Landlord is the property management company that represents the owners. Rent is due in the amount of \$850.00 per month. The Landlord does not currently hold a security deposit or a pet damage deposit.

The Tenants claimed \$3,100.00 for losses they testified were caused by the Landlord. Different claims appear to have been made in the Application and on a Monetary Order Worksheet, dated April 9, 2018. When asked specifically to confirm how much was being claimed and how the amount was calculated, C.K. was unable to do so.

The Tenants parked a truck and camper at the rental property. According to C.K., they had the owner's permission to do so, but conceded the agreement was not reduced to writing. The truck was a 1989 Mazda MPV; the camper was a 1965 Vanguard. C.K. testified that the Landlord threatened to tow the Tenants' truck and camper from the rental property on two occasions. C.K. referred to several pages of hand-written notes documenting instances which lead to the decision to sell the truck and camper. She testified she was afraid and stated that the truck and camper had to be sold to prevent the Landlord from causing damage or towing them away. The truck and camper were advertised online but there was limited interest. In August 2017, the truck and camper sold for \$300.00 and \$600.00, respectively. C.K. also testified the Landlord tore tarps that protected the truck and camper from the elements.

The Tenants' evidence and submissions included what appeared to be a broader dispute about how the yard space is allocated between the residents of the rental property, and to what uses it can be put. That matter is not before me.

In reply, A.G. testified that the rental property includes four units. Some of the yard is shared and some is not. He stated that the owner did not give the Tenants permission to park the truck and camper on the rental property, and has created a mess in the yard. A.G. also testified that the vehicles were uninsured which represented a concern for the owners. Although A.G. disputed the Tenants' claim, he expressed concern that there was no documentation in support of the value of the truck and camper, or of the sale price.

The Tenants also sought an order suspending or setting conditions on the Landlord's right to enter the rental unit. On behalf of the Tenants, J.D., who assisted C.K. during the hearing, testified that the Tenants have no difficulty with the Landlord doing maintenance around the property but that the Tenants feel harassed.

In reply, A.G. testified that the relationship between the Tenants and the Landlord (which is the current property management company) has been good since taking over. Notices are provided as required under the *Act* to advise the Tenants of entry to the rental unit. A copy of such a notice was submitted with the Tenants' documentary evidence.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

The Tenants claimed \$3,100.00 for losses incurred. On behalf of the Tenants, C.K. claimed the Landlord's actions caused her to fear for her safety and forced her to sell the truck and camper. Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

In this case, I find there is insufficient evidence before me to conclude the Tenants are entitled to monetary relief. There are several reasons for making this finding. First, the amounts claimed in the Application and the Monetary Order Worksheet differed. During the hearing, C.K. was unable to confirm the amount of the claim or how it was determined. Second, I find there was insufficient evidence before me that the Landlord breached the *Act*, regulations, or the tenancy agreement by asking the Tenants to remove the truck and camper from the rental property. Third, I was not referred to any evidence of the value of the truck and camper, or of the sale price. Finally, I find there was insufficient evidence before me to conclude the Tenants did what was reasonable to minimize the damage or loss. For example, the Tenants did not provide evidence of attempts to store the truck and camper elsewhere. This aspect of the Application is dismissed.

The Tenants also sought an order suspending or setting conditions on the Landlord's right to enter the Tenants' rental unit. However, I find there is insufficient evidence before me to conclude that conditions should be place on the Landlord's right to enter the rental unit. Indeed, the Tenants support the Landlord's efforts to repair and maintain the rental property. For the benefit of both parties, section 29 of the *Act* sets out the circumstances in which a landlord can enter a rental unit. Further, I note that section 32 of the *Act* requires a landlord to maintain rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and make it suitable for occupation by the tenant. I encourage both parties to consider these provisions. This aspect of the Application is dismissed.

Conclusion

The Tenants' Application is dismissed, without leave to reapply.

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: May 1, 2018

Residential Tenancy Branch