



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 tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

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

The hearing was conducted in person at the Residential Tenancy Branch (the "Branch"). All named parties attended the hearing in person with the exception of the tenant's witness who attended by conference call. All parties were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file with the exception of an angiograph report submitted by the tenant to the Branch only 4 days prior to the hearing. The landlord only received this document 5 days prior to the hearing as such this document was excluded from this hearing.

At the start of the hearing, the tenants had four witnesses present by way of conference call. The witnesses were excluded from the hearing until such time that they were called to present evidence. The tenants confirmed that they had a way of contacting the witnesses when and if necessary for them to be called to testify. The witnesses were advised to exit the conference and call back as soon as being contacted by the tenants.

During the hearing, the tenants only called the witness N.M. to testify.

The tenants' application was filed on October 3, 2017, only four days prior to the expiry of the two year time limit as per section 60 of the Act.

Issues

Are the tenants entitled to a monetary order for compensation for loss?

Are the tenants entitled to a return of all or a portion of the security deposit, including double the amount?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy for this basement suite began on May 1, 2014 and ended on October 8, 2015. The monthly rent was \$1650.00. The tenancy ended by way of frustration after a sewer back-up caused a flood in the basement suite. The amount of the security deposit paid at the beginning of the tenancy was in dispute. The tenants submit that they paid a security deposit of \$1650.00 and the landlord submits the security deposit was only \$825.00 which has since been returned in full by the landlord.

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all the details of the submissions and/or arguments are reproduced here.

The tenants are claiming double the security deposit arguing that the landlord failed to return the full security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenants testified that they paid \$825.00 by cheque and another \$825.00 in cash towards the security deposit. The tenants testified that they were not provided any receipt or a copy of the tenancy agreement. The tenants testified that a formal tenancy agreement was not entered into and the rental contract was just drawn up on a single piece of paper.

The tenants are also claiming compensation for various costs associated with moving and storage expenses, loss for the landlord's failure to upkeep and repair the rental unit, loss from the landlord's failure to provide parking, loss of freezer items and compensation for emotional stress and harassment.

The tenants submit that the landlord ignored their concerns about the plumbing problems which caused the flood. The tenants testified that they complained numerous times about the plumbing which was regularly backing up. The tenants submitted a letter dated September 30, 2015, five days prior to the flood, advising the landlord of various concerns with the rental unit. The tenants testified that they were not provided with a designated parking spot which is required by law. The tenants testified that they

were told to stay away and not retrieve their freezer and food items inside. When they finally got access, accompanied by two police officers, to pick up the freezer, they found the freezer empty.

The tenants also referred to various other concerns throughout the tenancy such as the unit being painted when they moved in, the smoke alarm and carbon monoxide sensor not working.

The tenants witness N.M. was the project manager for the restoration company that was hired to perform the work on the property after the flood. N.M. testified that the homeowner was extremely difficult to deal with for the duration of the restoration project which lasted 5-6 months.

The landlord argues the tenants only paid a security deposit of \$825.00. The landlord submitted a copy of a cheque dated April 21, 2014 in the amount of \$825.00 deposited to her account. The landlord testified that she did not collect an additional \$825.00 in cash and that the security deposit and all rent payments were paid by cheque. The landlord submitted a 6 page tenancy agreement signed by both parties on May 12, 2014. The landlord testified that this was the earliest date both tenants were available to sign the agreement. The tenancy agreement stipulates a security deposit of \$825.00. The landlord testified that she was not provided with a forwarding address until receiving a letter dated January 29, 2016. The landlord returned the security deposit in full by registered mail on February 2, 2016.

The landlord submits that the tenancy agreement does not include parking as a service or facility included in the rent.

The landlord testified the tenants were allowed to move in early towards the end of April 2014 and that they were aware there was still some painting work being completed in the rental unit. The painting work was completed in the second week of May 2014.

The landlord testified that the September 30, 2015 letter submitted by the tenants was the first time she ever received any complaint from the tenants. This letter was not received by the landlord in the mail until 2:00 p.m. on October 7, 2015 and coincidentally on this same date between 10:00-11:00 p.m. the toilet overflowed causing a flood in the unit.

On the following morning, October 8, 2018, a plumbing company called by the landlord and a restoration company, initially called by the tenants, arrived and began work on the rental unit. The restoration company advised the work could take up to 5 months to

complete. On this same day, the tenants were reimbursed their full rent for October 2015 and the tenants vacated the rental unit on the same day.

The landlord testified the tenants left behind a freezer and a black cabinet which she moved out of the rental to the carport area on October 9, 2015. The landlord testified that she plugged the freezer in. The landlord testified that all other belongings were removed by the tenants when they vacated. The tenants did not come to pick up the freezer and cabinet until March 2016. The landlord testified she attempted to contact the tenants numerous times in regards to picking up these items and providing a forwarding address for return of the security deposit.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenants provided insufficient evidence to support their claim that they paid an additional security deposit of \$825.00 in cash. I accept the copy of the cheque dated April 21, 2014 and signed tenancy agreement submitted by the landlord supports the landlord's position that only a security deposit of \$825.00 was paid.

The tenants provided a forwarding address to the landlord in writing on January 29, 2016 and the landlord returned the tenants' security deposit by registered mail on February 2, 2016. I find the landlord complied with section 38 of the Act by returning the security deposit in full within 15 days of being provided with a forwarding address in writing.

The tenants claim for return of the security deposit including double the amount is dismissed.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

The parties did not dispute the fact that this tenancy ended on October 8, 2015 after a sewer back-up flooded the rental unit. As such, I find this tenancy ended by way of frustration. The landlord returned the full rent of October 2015 to the tenants although the landlord may only have been legally obligated to return a pro-rated portion. I find the tenants provided insufficient evidence that they made numerous complaints to the landlord with respect to their concerns with the plumbing in the rental unit. I find the only supporting evidence on file with respect to the tenants communicating their concern to the landlord was the letter dated September 30, 2015. I accept the landlord's testimony that she did not receive this letter until October 7, 2015. The flood occurred later this same night. As such, I find the landlord did not have a sufficient opportunity to address the concerns and therefore was neither negligent nor not in compliance with the Act or tenancy agreement. I find the tenancy was frustrated by no fault of either party. Therefore, the tenants' claims relating to any costs associated with moving and storage are dismissed.

The testimony of the tenants witness was for the most part irrelevant as N.M.'s involvement with the landlord only began after the end of tenancy. I gave no weight to this testimony.

With respect to the tenants' claim for compensation in regards to parking, I find the tenancy agreement does not include parking as a service or facility included with the rent. This claim is also dismissed.

I find the tenants have provided insufficient evidence of being harassed by the landlord and dismiss their claim for compensation for emotional stress and harassment.

I find the tenants had the opportunity to remove the freezer at the same time they removed their other belongings on the day of the flood. I also accept the landlord's testimony and evidence that she attempted to contact the tenants to obtain their belongings. The tenants claim for compensation for lost freezer items is also dismissed.

The tenants claim for compensation for loss as a result of the painting work being done at the time of move-in is also dismissed. The tenants have provided insufficient evidence as to how they suffered a loss as a result of this painting work.

The tenants claims compensation for the landlord's failure to respond to various repair requests such as working smoke alarm etc. are all dismissed as there is insufficient evidence that these concerns were ever communicated to the landlord prior to the September 30, 2015 letter. Even if they were communicated to the landlord, the tenants have an obligation to mitigate losses. The tenants could have filed an application requesting an order for the landlord to perform repairs at any time during this 17 month

tenancy. The tenants filed no such application and also waited just under two years after the end of the tenancy to file this application for compensation.

The tenants' application is dismissed in its entirety without leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the filing fee paid for this application from the landlord.

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: June 13, 2018

Residential Tenancy Branch