



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants: MNSD

Landlord: MNDC MND MNSD MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 4, 2018. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenants all attended the hearing. The Tenant acknowledged receipt of the Landlord’s application package, amendment, and evidence. The Landlord acknowledged receipt of the Tenant’s application and evidence. Neither party took issue with the service of these documents.

The hearing lasted 65 minutes and all parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with the issue of unpaid rent, and the return of the security deposit. During the one hour hearing slot, there was insufficient time to hear the entirety of both applications. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the Landlord's application for monetary compensation, except his claim for unpaid rent, and to withhold the security deposit to offset this amount. Further, since the Tenants' application to have the security deposit returned is related to this item, I will be addressing this matter as well.

Issue(s) to be Decided

Landlord

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenants?

Tenants

- Are the Tenants entitled to the return of the security deposit held by the Landlord?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that monthly rent was \$1,203.00, and was due on the first of the month. Both parties also agree that the Landlord still holds a security and pet deposit in the amount of \$1,100.00.

The Landlords stated that they issued a 2 Month Notice to End Tenancy back in September of 2017. The effective date of this Notice was supposed to be the end of November 2017, with the last month rent being free. However, both parties agree that

the tenancy continued and the Tenant filed to dispute the Notice. A hearing was held on February 5, 2018, and the Notice was upheld. The Landlord was given a 2 day order of possession, and the tenancy ended shortly thereafter.

The Tenants stated that they received the decision on February 13, 2018, and moved out within 2 days, by February 15, 2018. The Tenants stated that they returned the keys on February 25, 2018, which the Landlord corroborated. The Landlord stated that he was unaware the Tenants had left the unit until they returned the keys. The Landlord stated that he deserves to be compensated for February rent because the Tenants did not tell him they left, and did not return the keys until February 25, 2018. Both parties agree that no condition inspection was completed at move-out.

Landlord's Application

The Landlord is applying to recover unpaid rent for November and December of 2017, and January and February of 2018. The Landlord stated that no rent was received at all for this period of time, and they are looking to recover \$1,203.00 x 4. The Landlord and the Tenants agree that the Tenants were \$1.00 short on rent for October 2017.

The Tenants stated that they went to the bank and obtained certified cheques (provided into evidence) in the amount of \$1,202.00 for November and December 2017 rent. The Tenants stated that the Landlord came by the rental unit on December 4, 2017, and picked up the certified rent cheques for November and December. The Landlord stated that this did not occur and he was never given any cheques or payment for these months. The Tenants stated that they do not have any evidence to show that they provided these cheques to the Landlord or that they were cashed/deposited by the Landlord.

The Tenants stated that they did not pay rent for January 2018, as this was their "free month", which was due to them based on the 2 Month Notice that was issued in September 2017. The Tenants also stated that they did not pay for February 2018 because they left part way through the month, after the hearing that took place.

The Landlord is looking to retain the deposits he holds to offset the rent that is owed.

Tenant's Application

The Tenants stated they are looking for the return of the deposits the Landlord holds. The Tenants are seeking \$1,100.00 in total. The Tenants stated that they provided their forwarding address in writing by registered mail on April 28, 2018. The Landlord acknowledged getting this on May 1, 2018. However, they had already filed an application against this deposit on March 8, 2018.

The Tenants stated that they also wanted to apply to get compensation because the Landlord did not move into the rental unit as he said he would. However, as discussed during the hearing, the Tenants did not apply properly for this, and they are granted leave to reapply for this issue, if desired.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Landlord's Application

The Landlord stated that no rent was paid for November 2017, through till when the Tenants returned the keys, on February 25, 2018. The consistent evidence is that monthly rent was \$1,203.00, and was due on the first of the month. I also note that Landlord issued a 2 Month Notice pursuant to section 49 of the Act, and this Notice was upheld at the hearing in February of 2018. The Notice was issued, and it appears to have precipitated the end of the tenancy. I find this entitles the Tenants to 1 Month's rent in compensation, pursuant to section 51 of the Act. This will be addressed further below, when determining what the Landlord is entitled to.

The undisputed evidence is that the Tenants also owe \$1.00 in rent for October 2017. Further, the Tenants do not dispute that no rent was paid for January or February of 2018. I note the Tenants stated that they paid rent for November and December of 2017. However, when considering this further, I note the Tenant provided no further proof to show that the certified cheque she obtained was cashed, or that it was actually delivered to the Landlord. The Landlord directly refutes ever getting these cheques and said that the Tenant should be able to provide proof he cashed them, if in fact this happened.

I find the Tenants have failed to sufficiently demonstrate that they paid rent for November and December of 2017. I note there are copies of certified cheques. However, there is no evidence these were given to the Landlord or cashed. Should the Tenants find proof that this money was deposited, they may wish to apply for a review consideration. However, without further proof, I am not satisfied that rent was paid for November or December of 2017.

With respect to rent for the month of February 2018, I note the Tenants did not return the keys until February 25, 2018, and I find this reflects the end of the tenancy.

In summary, I find the Tenants owe the following rent:

- \$1.00 for October 2017 rent
- \$1,203.00 for November 2017 rent
- \$1,203.00 for December 2017 rent
- \$1,203.00 for January 2018 rent
- February 2018 rent is free, pursuant to section 51(1) of the Act

- SUBTOTAL: \$3,610.00

- LESS: \$1,100.00 security and pet deposit currently held by the Landlord
(Pursuant to section 72 of the Act, I authorize the Landlord to withhold this amount to offset what he is owed)

- TOTAL: \$2,510.00

With respect to the Tenant's application to recover the security deposits, I find the Landlord is entitled to withhold the entirety of these amounts to offset the rent he is owed, as specified above. The Tenants' application on this point is dismissed, without leave.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was largely successful in this hearing, I also order the Tenants to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution.

In summary, I issue the Landlord a monetary order for \$2,610.00, as specified above.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$2,610.00**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: October 5, 2018

Residential Tenancy Branch