



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking compensation for money owed, damage, or loss under the Act, regulation, or tenancy agreement, recovery of the filing fee, and authorization to retain the Tenants’ security and pet damage deposits against any amounts owed.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”) and both Tenants, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Application, the Notice of Hearing, or the documentary evidence before me for consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage or loss under the Act, regulation, or tenancy agreement, recovery of the filing fee, and authorization to retain the Tenants’ security and pet damage deposits?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy, which commenced August 1, 2017, was set to end July 31, 2018. The tenancy agreement also states that rent in the amount of \$850.00 is due on the first day of each month, and that the Tenants agree to pay a \$350.00 fee if they break the agreement. The parties agreed that these are the correct terms of the tenancy agreement and that a \$250.00 security deposit and a \$200.00 pet damage deposit were paid by the Tenants, which the Landlord still holds.

The parties agreed that the tenancy ended on February 25, 2018, as the Tenant's gave notice to end the tenancy, and that the Tenant's forwarding address was received by the Landlord, in writing on February 27, 2018. The parties also agreed that a move-in condition inspection and report were completed and exchanged in accordance with the *Act* and the regulation. Although the parties agreed that a condition inspection was to occur on February 25, 2017, and that they met on that date for that purpose, they disagreed about why it was not conducted. The Agent stated that she and the Tenants met at her office on February 25, 2018, prior to the inspection and that the Tenants were to follow her to the rental unit to complete the inspection. The Agent stated that she waited in the rental unit for some time, and when the Tenants did not appear and she could wait no longer, she advised them via text message that she had to leave. She stated when she returned to the lobby, the Tenants had put the keys to the rental unit through her mail slot. The Tenant S.S. agreed that he met the Agent as stated above but testified that he is partially deaf and thought he heard her tell him to wait in the lobby. The Tenant stated he waited in the lobby and when he received the Agent's text stating she could not wait any longer, he placed the keys through the mail slot and left.

The Agent stated she attempted to arrange another time for the inspection but the Tenants did not respond to her final notice for inspection and refused to answer her calls or texts. The Tenants stated that they no longer wished to deal with the Agent or any matters related to the tenancy and figured the matter would simply be over as the Landlord still had their pet damage deposit and security deposit.

The Agent stated that the Landlord is seeking \$350.00 in accordance with the tenancy agreement as the Tenants ended the tenancy prior to the end date of the fixed term. Although the Tenants agreed that they ended the tenancy, they stated they felt that they had no choice as the Landlord was attempting to evict their pet and there had been a fire in a neighbouring unit. They also agreed that the tenancy agreement contains a clause stating they will owe \$350.00 if they end the tenancy early.

The parties were in agreement that in approximately December of 2017, the Tenants lost the key to their mailbox and that the mailbox lock and key had to be replaced. The Landlord sought \$30.00 for this cost and submitted a ledger showing this charge to the Tenant's account in December of 2017. The Tenants did not dispute that this amount is owed.

Several times during the hearing the Tenants stated that the Landlord has \$450.00 in deposits and that this amount should simply be enough to resolve the matter and that the hearing should end. I advised the Tenants that the Landlord has the right to make their full claim and to have it heard by the Residential Tenancy Branch (the "Branch"). The Tenants also stated that they feel they were mistreated during their tenancy. I advised the Tenants that they can make a claim under the *Act* with the Branch, should they wish to do so, if they feel they are entitled to compensation from the Landlord but that I could only deal with the matters claimed in the Application before me. The Tenant S.S. became angry, stated that they are not aware of all the rules and laws, do not know how to file an application and want nothing more to do with this matter. The Tenant S.S. stated that the Landlord can have whatever amounts they are claiming and then hung up the phone. Both of the Tenants were calling on speakerphone from the same phone number and as a result, when S.S. ended the call, it was ended for both Tenants.

Pursuant to section 7.3 of the Rules of Procedure, the dispute resolution hearing proceeded in the absence of the Tenants. Although the hearing continued for another seven minutes, the neither of the Tenants called back into the telephone conference call.

In addition to the \$305.00 sought for liquidated damages, and the \$30.00 sought for the replacement of a mailbox lock and key, the Agent stated that the Landlord is seeking \$225.00 in cleaning and repair costs. The Agent pointed to the move-out condition inspection report, which she states was completed in the Tenants' absence when they failed to appear for the scheduled inspection and did not respond to her attempts to schedule a subsequent inspection. The Agent stated than other than a cursory mopping and sweeping, the Tenants did not clean the rental unit and the entire rental unit needed general cleaning as well as cleaning related to pet odour and occupancy. The Landlord also stated that there was some damage to the rental unit from the Tenants and their dogs which required repair. In support of her testimony the Agent provided the move-in and move-out condition inspections reports, photographs of the damage and an invoice for the cleaning and repair costs.

Analysis

Section 38(1) of the *Act* states that within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit. In the hearing the parties agreed that the tenancy ended on February 25, 2018, and that the Tenant's forwarding address was provided to the Landlord in writing on February 27, 2018. As the Landlord's Application seeking to retain the Tenants' security deposit and pet damage deposit was received by the Branch on March 8, 2018, I find that the Landlord filed their Application in compliance with section 38(1) of the *Act*.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Based on the testimony provided by the three parties in the hearing, I find that the Tenants breached section 45(2) of the *Act* by ending their fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy without the permission of the Landlord or authority to do so under the *Act*, and that they therefore owe \$350.00 as agreed to in the tenancy agreement for liquidated damages.

Based on the testimony provided by the three parties in the hearing, and the uncontested testimony and documentary evidence provided by the Agent after the Tenant's voluntarily left the hearing, I find that the Landlord is entitled to the \$30.00 sought for the replacement of a mailbox lock and keys and to the \$225.00 sought for cleaning and damage to the rental unit as the Tenants breached section 37 of the *Act* when they failed to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear at the end of the tenancy.

Based on the above, the Landlord is therefore entitled to the \$605.00. I also find that the Landlord is entitled to recovery of the \$100.00 filing fee and to retain the \$450.00 security and pet damage deposits pursuant to section 72 of the *Act* in partial recovery of the above noted costs.

As a result, the Landlord is therefore entitled to a Monetary Order in the amount of \$255.00; \$605.00 for liquidated damages, mailbox lock and key replacement, repairs to

the rental unit and cleaning costs, plus \$100.00 for recovery of the filing fee, less the \$450.00 in deposits retained by the Landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$255.00. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) of the *Act* and section 25 of the *Interpretation Act*. In the event that this is not the case, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

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 29, 2018

Residential Tenancy Branch