



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUMMINGBIRD LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MND, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”). The matter was set for a conference call hearing.

The Landlords applied requesting a monetary order for money owed or compensation for damage or loss; for a monetary order for damage; to keep all or part of a pet damage deposit or security deposit, and to recover the cost of the application fee.

The Tenants applied for the return of the security deposit and pet damage deposit and to recover the cost of the application fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they had exchanged the documentary evidence that I have before me.

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.

Preliminary and Procedural Matters

The Tenants submitted that they received the Landlords evidence late; however, they agreed that the Landlords’ evidence could be considered.

Issues to be Decided

- Are the Landlords entitled to compensation for damage to the unit?
- Are the Landlords entitled to other compensation?
- Are the Landlords entitled to keep the security deposit and pet damage deposit in full or partial satisfaction of the claims?

Background and Evidence

The parties testified that the tenancy began on July 1, 2017, as a one year fixed term tenancy to continue thereafter on a month to month basis. The Tenants were to pay monthly rent in the amount of \$1,950.00 to the Landlords by the first day of each month. The Tenants paid the Landlords a security deposit of \$975.00 and a pet damage deposit of \$487.50. The Tenants provided a copy of the tenancy agreement.

The parties testified that the tenancy ended on July 31, 2018, when the Tenants moved out of the rental unit.

Landlords Application

August 2018, Rent

The Landlords testified that the Tenants did not provide proper notice to end the tenancy. The Landlords testified that they received an email from the Tenants on July 1, 2018, stating that the Tenants were moving out at the end of the month. The Landlords testified that they were not able to re-rent the unit for the entire month of August 2018. The Landlords testified that they rented the unit out starting August 15, 2018. The Landlords submitted that they suffered a loss of half a month's rent. The Landlords are seeking compensation in the amount of \$975.00.

In reply, the Tenants confirmed that they notified the Landlord via email on July 1, 2018 that they were ending the tenancy. The Tenants submitted that the Landlord acknowledged receipt of their notice so they assumed that the Landlord accepted the notice. The Tenants testified that they did not see the Landlord attempt to rent the unit out.

Landscaping

The Landlord testified that the parties reached a verbal agreement at the start of the tenancy that the Tenants could lay ground cover in the yard. The Landlord explained

that ground cover is square burlap mats that cover the ground. The Landlord testified that the Tenants laid the ground cover incorrectly causing the lawn to die. The Landlord testified that he incurred disposal and landscaping costs to repair the lawn.

The Landlords testified that they had the lawn repaired at a cost of \$600.00. The Landlord provided color photographs of the affected area of the yard. The Landlord provided an invoice dated October 12, 2018, in the amount of \$715.00 for the cost of having the lawn repaired and a receipt for disposal costs.

In reply, the Tenants confirmed that the parties agreed that the Tenants would put ground cover down. The Tenant submitted that he had an expectation of being compensated by the Landlord. The Tenants testified that the ground cover remained in place for the duration of the tenancy. The Tenants submitted that the Landlord made no mention of them removing the ground cover prior to them moving out. The Tenants submit that the condition inspection report makes no mention of a problem in the yard.

In reply, the Landlord testified that he did not ask the Tenants to remove the ground cover prior to moving out. The Landlord testified that at the time the condition inspection report was completed on July 31, 2018, the yard and shrubs were not dead. The Landlord testified that the shrubs and grass died after the Tenant moved out.

Security Deposit and Pet Damage Deposit

The Landlords applied on September 12, 2018, to keep the security deposit and pet damage deposit towards their claims.

Tenants' Application

The Tenants are seeking the return of double the security deposit and pet damage deposit.

The Tenants testified that they provided their forwarding address in writing to the Landlords on July 31, 2018, within the condition inspection report. The Tenants testified that after the inspection the Landlord asked them to copy the report and return a copy to the Landlord. The Tenants testified that they returned the condition inspection report to the Landlords on August 3, 2018. The Tenants provided a copy of the condition inspection report which contains the Tenants' forwarding address.

The Tenants testified that on August 8, 2018, they received an email from the Landlord indicating that the Landlord was only returning \$388.50 to the Tenants. The Tenants testified that there was no agreement that the Landlord could retain a specific amount from the deposits at the end of the tenancy.

The Tenants testified that they remained in email contact with the Landlord and the Landlord said he would return the full amount of the pet damage deposit but was keeping the security deposit.

The Tenants testified that the Landlord attempted to return the pet damage deposit of \$487.50 using electronic transfer on August 19, 2018; however, the Tenant could not accept the money transfer because the Landlord failed to provide the password required to accept the funds.

The Tenants testified that on August 23, 2018, they also received a cheque from the Landlord in the amount of \$487.50; however, when they attempted to cash the cheque it had been cancelled by the Landlord.

In reply, the Landlords testified that the Tenant had stated that he would take responsibility for any loss of rent. The Landlords testified that they were in receipt of the Tenants forwarding address when the Tenants returned the condition inspection report to the Landlords on August 3, 2018. The Landlord testified that they believed the Tenants' forwarding address may be incorrect; however, they made no attempt to rely on the address by filing an application to make claim against the deposit by August 20, 2018.

The Landlord testified that on August 16, 2018, the Tenant agreed that the Landlord could keep the security deposit of \$975.00 for the loss of August rent. The Landlord referred to documentary evidence provided of an email conversation that took place on August 16, 2018.

With respect to the return of the pet damage deposit, the Landlord testified that the pet damage deposit was returned using e-transfer on August 18th which is within 15 days of receiving the Tenants forwarding address. The Landlord testified that the Tenant knew the password to accept the transfer but did not accept it and the transfer expired after 30 days. The Landlord submitted a document that states the Tenant did not contact the Landlord regarding any issue with accepting the e-transfer.

The Landlord testified that they initially sent the Tenants a cheque but wanted to ensure the Tenants received the pet damage deposit in time so they cancelled the cheque and sent the e-transfer instead. The Landlords testified that they believed the Tenant had received the e-transfer for the pet damage deposit.

In reply, the Tenant disagreed that there was an agreement and referred to the email exchange dated August 16, 2018, where the Tenants submits that an amount was not agreed upon and the Tenant stated that an arbitrator should decide any loss of rent.

The Tenant testified that he did not receive a password to accept the e-transfer of the pet damage deposit. The Tenant testified that he requested the Landlord provide the password; but the Landlord did not provide it. The Tenant provided a copy of an email sent to the Landlord dated September 18, 2018, addressed to Mr. J.S. indicating that the agreed upon password did not work and indicating that the Landlord would not provide the e-transfer password.

Analysis

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided....

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides the following:

"...damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy."

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Landlords Application

August 2018, Rent

Section 45 of the Act requires a Tenant to provide written notice to end a tenancy not earlier than one month after the date the Landlord receives the notice and on the day before the day rent is payable under the tenancy agreement.

I find that the Tenants provided notice to the Landlord on July 1, 2018; however, the notice was not proper notice to end the tenancy by July 31, 2018. The Tenants notice was late. I find that the Tenants breached section 45 of the Act and are responsible to compensate the Landlord for any loss of rent up to the earliest time that the Tenants could legally have ended the tenancy.

I find that earliest date the tenancy could have legally ended is August 31, 2018. I find that the Tenants are responsible for a loss of August 2018, rent in the amount of \$975.00.

Landscaping

While I am mindful that Tenants are generally expected to return landscaping, or a yard to its original condition when they vacate, I am not satisfied that this was the arrangement between the parties. I find that the parties agreed at the start of the tenancy that the Tenants would provide ground cover on areas of the rental property and this ground cover continued for the duration of the 13 month tenancy.

I find that there was no evidence provided that the parties agreed that the Tenants would remove the ground cover at the end of the tenancy. I find that the Landlord did not request the Tenants to remove the ground cover at the end of the tenancy. The Landlord's testimony that the shrubs and grass were not dead at the end of the tenancy; and that they died after the Tenants moved out indicates to me that the Landlord was content with the having the ground cover left behind.

I find that it was after the tenancy ended, and after the shrubs and grass died, that the Landlord changed his mind and decided that the Tenants were responsible. The Landlords invoice for landscaping is dated October 12, 2018, more than two months after the tenancy ended. I find that the grass and shrubs were in satisfactory condition up until the point the Tenants moved out of the rental unit.

For these reasons above, the Landlords' claim for the costs to repair the yard are dismissed.

Tenants' Application

Security Deposit and Pet Damage Deposit

The Tenants are seeking the return of double the amount of their security deposit and pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Section 38(4) of the Act provides that a Landlord may retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy, the Tenant agrees in writing the Landlord may retain the amount to pay a liability or obligation of the Tenant.

I find that the tenancy ended on July 31, 2018. The Landlords were in receipt of the Tenants' forwarding address on August 3, 2018. I find that due to the fifteenth day falling on a weekend, the Landlords had until August 20, 2018, to return or make application to keep the deposits. The Landlord applied for dispute resolution on September 12, 2018.

I find that there is insufficient evidence from the Landlords to prove that the Tenant provided a written agreement on August 16th that the Landlord could retain an amount to pay for a liability. I find that the email dated August 16, 2018 indicates that the Tenant suggested an arbitrator should determine the amount of any loss of rent.

With respect to the return of the pet damage deposit, I accept that the Landlord sent the Tenants an e-transfer in the amount of the pet damage deposit on August 18, 2018; however, I find that the agreed upon password did not work. I do not accept the Landlords submission that the Tenants failed to contact the Landlord for a new password. The Tenants have provided the stronger evidence on this issue. I accept

the Tenants' evidence that the Tenants requested the password and the Landlord did not provide it. I find that since the Tenant was not provided the means to accept the transfer and since the Landlord failed immediately rectify the situation, the result is the same as if the Landlord never returned the pet damage deposit within 15 days.

I find that the Landlord did not have the Tenants agreement to withhold a specific amount of the security deposit or pet damage deposit. I find that the Landlords failed to repay the security deposit and pet damage deposit to the Tenants, or make an application for dispute resolution against the deposits, within 15 days of the date the tenancy ended or the date they received the Tenants' forwarding address in writing.

Pursuant to section 38 (6) of the Act, the Landlords must pay the Tenants double the amount of the security deposit and pet damage deposit. I award the Tenants \$2,925.00 which is double the amount of the security deposit and pet damage deposit.

Monetary Awards

The Landlord is awarded \$975.00 for a loss of August 2018 rent.

The Tenants are awarded the amount of \$2,925.00 for the return of double the security deposit and pet damage deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As both parties had some success with their applications, I decline to award the costs of the filing fees.

After setting off the Landlords award of \$975.00 against the Tenants award of \$2,925.00 I find that the Landlord owes the Tenants the amount of \$1,950.00. I order the Landlords to immediately return the balance of \$1950.00 to the Tenants.

I grant the Tenants a monetary order in the amount of \$1,950.00. For enforcement, the monetary order must be served on the Landlords and may be enforced in the Provincial Court.

Conclusion

The Landlord established a loss of rent for August 2018, in the amount of \$975.00.

The Tenants established that the Landlords failed to repay the security deposit and pet damage deposit to the Tenants, or make an application for dispute resolution against

the deposits, within 15 days of the date the tenancy ended or the date they received the Tenants' forwarding address in writing.

I order the Landlords to immediately return the balance of \$1,950.00 to the Tenants.

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: January 16, 2019

Residential Tenancy Branch