



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: MNDC MNSD FF
Landlord: MND FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearings were held, via teleconference, on January 11, 2019, and February 25, 2019. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlords and the Tenants both attended the hearings. Both parties confirmed receipt of each other’s application package, and evidence.

All parties provided affirmed 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.

Issue(s) to be Decided

Tenants

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?
- Are the Tenants entitled to the return of double the security deposit held by the Landlord?

Landlords

- Are the Landlords entitled to compensation for damage to the rental unit?

Background and Evidence

During the hearing, the parties agreed that monthly rent was \$2,300.00 and was due on the first of the month. Both parties agree that no move-out inspection was completed. The Landlord provided no documentary evidence that they attempted to schedule an inspection, despite having an order of possession for the end of June 2018, and seemingly being aware that the tenancy would be ending at that time. The Tenant stated he was never given a chance to have a move-out inspection done, and the Landlords stated they tried to schedule one. However, no evidence was provided to corroborate this point.

Tenant's application

Security deposit

The Tenants stated that they received a 2-Month Notice last January (2018) from the previous owners of the house, but did not move out until early July 2018. The Tenants stated that they paid a security deposit of \$1,075.00 at the start of their tenancy but it was paid to the previous owners. The Tenants uploaded a copy of the statement of adjustments from the sale of the house, which shows that this amount was transferred from the seller to the buyer, who is "Landlord" for the purposes of this hearing. During the hearing, the Landlord was finally able to confirm that they received the security deposit, and still hold it, despite withholding this information for the bulk of the hearing.

The Landlord stated that they did not return the deposit because of the damage left by the Tenants. The Tenants want double the security deposit because they provided their forwarding address but never got any money back.

The Landlord stated that the Tenants did not move out until July 5, 2018. The Tenants acknowledged in the hearing that they may have left a few items behind but picked them up by July 5, 2018. The Landlord stated it was later than this but was unclear on what the date was. The Tenants stated that they provided their forwarding address in writing by email and text message on July 28, 2018, but the Landlord denies getting these. The Tenant also stated that he sent the Landlord his forwarding address by registered mail but was unable to locate any tracking information, or proof of service.

The Landlord also denied getting this package. The Tenant stated he has not received the deposit back and now he wants double pursuant to section 38 of the Act.

Free months' rent

The Tenants also stated that they are looking for compensation equivalent to one months' rent (\$2,300.00) for the month of June 2018, pursuant to section 51 of the Act. The Tenants provided a copy of the 2-Month Notice they were served last January in 2018. The Tenants stated that they were never given the one free month in rent, which is normally due when a 2-Month Notice is issued.

The Landlords stated that they had a hearing last May 2018, and that they reached a settlement agreement. The Landlords stated that they both made an agreement with respect to how and when the tenancy would end, and an order of possession was issued to support this agreement. The Landlords provided a copy of this previous file number and settlement agreement. This settlement agreement lays out the following items:

1. *The Landlords and the Tenants agreed to end the tenancy on June 30, 2018 at 1:00 p.m.*
2. *The Tenants agreed to pay the May 2018 and June 2018 rent in the amount of \$2,300.00 for each month as in the tenancy agreement.*
3. *The Landlord requested access to the rental unit to do repairs to the downstairs bathroom and bedroom. The Tenant agreed to give the Landlord access with 24 hour Notice by the Landlord for entry to the rental unit.*
4. *The Landlord will receive an Order of Possession with and effective vacancy date of June 30, 2018.*
5. *As this is a settlement agreement both parties are ordered to bear the cost of the filing fee which they have already paid.*

The Tenants feel they should still receive the one months' free rent because they were given a 2-Month Notice.

Landlords' application

The Landlords stated that they are looking for \$3,785.50 to pay for a broken window and a damaged deck surface. The Landlord provided one photo of the broken window, and one photo of the burned spot on the exterior deck. The Landlord did not submit any further documentation, photos, receipts, or inspection reports.

The Tenant stated that he did not damage the window, and he has no idea how or when it broke. The Tenant also stated that he did not damage the deck outside, and denies that he is responsible for this amount.

Analysis

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

Landlords' application

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

The Landlords have applied to be compensated for damage, in the amount of \$3,785.50, for "broken windows" and "patio waterproof damaging". I note the Landlords have provided one photo of a burn mark on the patio floor, and also one photo of a cracked window. The Landlords did not provide any further evidence to support this portion of their claim. There is no evidence the Landlords did a condition inspection report, nor is there any receipts or invoices substantiating the value of any potential loss. The Tenants deny that they caused any of this damage.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find the Landlords, have failed to provide sufficient evidence to support what the condition was at the start and the end of the tenancy, and that any damage they have identified was the result of the Tenants' actions. I find the Landlords have failed to meet the burden of proof placed on them to demonstrate that the Tenants caused, and are responsible for the damaged items. Furthermore, the Landlords have provided no

worksheet laying out what the items cost to repair. Ultimately, without further evidence on this matter, the Landlord has not met the burden of proof, and I dismiss this portion of the Landlords' claim, without leave to reapply. I note the Tenant stated that he was never offered a move-out inspection, and a report was not completed. The Landlord indicated they tried to schedule one but it was the Tenant's fault that one did not occur. I note the Landlord has provided no further documentary evidence to show that they offered at least 2 opportunities for inspection. The consistent evidence is that no move-out inspection was completed.

Tenant's Application

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenants must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

Security Deposit

In this case, I note there was no move-out inspection completed, and there is insufficient evidence the Landlord attempted to schedule an inspection, as is required under section 35(2) of the *Act*. I note the Landlords had an order of possession for the end of June 2018, and ought to have made more of an attempt to schedule a condition inspection as of the date of that order of possession. Since the Landlords failed to offer at least 2 opportunities for inspection at the end of the tenancy, I find the Landlords extinguished their right to claim against the security deposit or pet damage deposit. This extinguishment is explained in section 24(2) as follows:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection]

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[Reproduced as written.]

Next, I note that Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

Since the Tenant was unable to prove that he served the Landlord with his forwarding address in writing, I decline to award him with double to security deposit. Although the Tenants failed to demonstrate that they served their forwarding address in writing to the Landlords, I note the Landlord also extinguished their right to claim against this deposit, as indicated above. I find the Tenants are entitled to receive the full amount of their deposit back in the amount of \$1,075.00, but they will not receive double this deposit.

Tenants' Application for compensation equivalent to a full month's rent for June 2018

Having considered the totality of the situation, I note the Tenants filed an application to cancel the 2-Month Notice and a hearing was conducted around May 8, 2018. During that hearing, the parties entered into a settlement agreement, where the parties agreed that the tenancy would end and that the Tenants would be given some extra time to move and vacate, well beyond what was initially indicated on the 2-Month Notice.

After reviewing the settlement agreement from the last hearing, I find the tenancy ended by way of the settlement agreement, and not by the 2-Month Notice. The settlement agreement set out that the Tenants would pay rent for the last two months of their tenancy, in full, as they normally would. Although compensation under section 51 of the *Act* is not specifically addressed in that settlement agreement, I find the Tenants are not entitled to compensation pursuant to section 51 of the *Act*. Section 51(1) normally provides one months' rent in compensation to tenancies that end by way of a 2-Month Notice, and is typically paid to the Tenant as a free last month rent, prior to moving out. However, in this case, a settlement agreement was entered into where the parties ended the tenancy in an alternative manner, with alternative parameters.

Since the tenancy ended by way of a mutual agreement and settlement, and not by considering the merits of the 2-Month Notice, I find compensation under section 51(1) of the *Act* is not due, and this portion of the Tenants' application is dismissed.

In summary, after considering both applications, I find the Tenants are entitled to a monetary order in the amount of \$1,075.00 which reflects the amount of the security deposit currently held by the Landlord.

I decline to award the cost of the filing fee to the Tenants, as they were only partly successful in their application. Further, as the Landlords were not successful, I decline to award them the filing fee.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$1,075.00**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants 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: February 26, 2019

Residential Tenancy Branch