



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$4,432.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. The Tenants' claim includes \$4,000.00 for double the return of their security and pet damage deposits, and \$432.00 for lost wages. The Tenants also applied for recovery of their \$100.00 Application filing fee.

The Tenant, H.F., and the Landlord, P.D., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. However, when I asked him about it, the Landlord said he had not received a copy of a letter dated May 12, 2019, that the Tenant submitted to the RTB. I have dealt with this matter as described below.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that on March 21, 2019, they signed a tenancy agreement for the Tenants to rent the rental unit from the Landlords for a periodic tenancy that was to begin on May 15, 2019. The Parties agreed on a monthly rent of \$2,600.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$1,300.00, and a pet damage deposit of \$700.00 ("Deposits"). The Parties agreed that the Tenants never moved into to the rental unit, as the Tenants claim in their Application that:

Home was not ready for us to move in as there were structural/electrical, cleanliness & mold issues that the landlord refused to repair. I lost 4 days work and unable to move in. Had to find different home to rent.

[reproduced as written]

The Parties agreed that the Landlords allowed the Tenants access to the rental unit a few days prior to the official start date of May 15, 2019, as the previous tenants had moved out early.

Double the Security and Pet Damage Deposits

The Tenant said that he provided the Landlord with his forwarding address in a letter he said he delivered in person on May 12, 2019 ("Letter"). The Tenant submitted a copy of this Letter in which he lists the deficiencies he said he observed in the rental unit, which he said made it uninhabitable for his family.

The Tenant said that his family arrived on May 12, 2019, to start moving in early. The Tenant explained what he said he and his family discovered in the rental unit, which included:

- the smell of rotting food in the kitchen;
- black mould on the bedroom walls;
- holes in walls behind posters;
- improper wiring for the washer and/or dryer;

- basement fireplace pulled apart; and
- indication of a former grow-op.

The Tenant said that his daughters had physical reactions to the condition of the rental unit, given their respective medical conditions. The Tenant said that based on the condition of the rental unit and his daughters' physical reactions, he returned the keys to the Landlord and left.

The Tenant said that he returned about an hour and a half later with the Letter, which contained a list of the repairs that were required to make the rental unit habitable for the Tenants before they would move in. The Tenant said that the Landlord wrinkled up the Letter and threw it on the ground. The Tenant said that this meant he had to find another place to live.

The Landlord disagreed with much of what the Tenant said in terms of the condition of the rental unit. The Landlord also said that the Tenant did not present him with a list of required repairs or his forwarding address. Early in the hearing, when I asked the Landlord if he had a copy of a document dated May 12, 2019 from the Tenants' submissions, he said he did not have a document with this date.

Regarding the condition of the rental unit, the Landlord said the following:

A lot of it has been fabricated for him to say that walls are ripped out in the basement 14 years after [the grow-op] incident in 2005. All the other claims are false. We bought the house in March [2018] and had a family move in. They lived there for a year with no issues. They moved out because they bought a house. Any issues we've had with the house we've gotten fixed. There's one hole in the basement behind the door.

The Tenant submitted what looks like a marked copy of the Letter that he said he gave the Landlord on the day he attempted to start moving into the rental unit. The Tenants' copy of the Letter is handwritten and marked/stained, looking like it may have been the copy that the Tenant said he gave the Landlord. The Tenant said the Landlord crumpled it up and threw it down.

The Landlord said:

[The Tenant] and his wife and daughter had come taken a look at the house on March 19 [2019]. On March 20 he sent pay stubs. And [the Tenant] came by my

house on March 21 to give me a cheque and he signed the contract.

The day that the house was empty, I called him to say you can move in, and I'll give you the keys earlier. He gave me post-dated cheques for the keys. His daughters didn't like the house. [The Tenant] said this is not going to work and he needs the cheques back. I gave them back.

Regarding the security deposit, I want to do things properly, as it's not just my house; [there is another owner]. I called the Residential Tenancy Branch and they told me that as long as he provides me with a mailing address, I give him back the Deposits. They said I can always file for dispute resolution on my end.

As for the contract he signed, termination of the contract requires 30 days' notice. As per conversation with Residential Tenancy Branch he's bound [by the tenancy agreement]. If the house is not going to work – fine, but I couldn't find any other renters. He also left a pool on the property – an above ground pool and a trampoline, as well as some other things until May 16. I took some pictures.

I said I would give the Deposits back, as long as I could get renters in. The RTB said I have to give Deposit back, but I only had his address because of dispute resolution.

Claim for Lost Wages

In the hearing, the Tenant said he was claiming recovery of \$432.00 for four days of lost wages for dealing with this matter. He said he took off more days for finding and moving into the property in which he ultimately decided to live.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 38 of the Act states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the evidence before me overall, I find that it is more likely than not that there was only one copy of the Letter, which the Tenant submitted into evidence. I find that the Tenant may have presented the Landlord with the Letter, which the Landlord gave back or did not take. Then the Tenant took the Letter with him, thereby withdrawing his having given the forwarding address to the Landlord. The Tenant did not indicate that he had access to a machine to photocopy the Letter before returning to the rental unit to give it to the Landlord, which supports my inference that there was only one copy of the Letter, which the Tenant retained. Given everything before me on this matter, I find it more likely than not that the Landlord did not have a copy of the Letter with the Tenants' forwarding address. Accordingly, I find that the Tenants' Application for the return of double the security Deposit was premature, as they had not provided the Landlords with a written copy of their forwarding address.

The Landlords may have a monetary claim against the Tenants for ending the tenancy with insufficient notice; however, the Landlords did not apply for a cross-application with the Tenants' Application, so those matters are not before me.

In the hearing, in case I found that the forwarding address had not been provided, I stated that the Landlord had been provided with the Tenants' forwarding address via the Application documents as of the date of the hearing. The Tenant confirmed that the Application contains their current address. As a result, pursuant to section 38 of the Act, the Landlords have fifteen days from the date of the hearing – September 13 – to apply for dispute resolution or to return the Tenants' Deposits by September 28, 2019.

Accordingly, I dismiss the Tenants' Application for the recovery of double the return of the Deposits with leave to reapply. The Tenants may reapply for such an order, if the Landlords do not return the Deposits or apply for dispute resolution claiming against the Deposits within 15 days of the hearing date – by September 28, 2019.

Lost Wages

As for the Tenants' lost wages that he said resulted from missing work due to this tenancy matter, the Tenants did not provide any pay stubs or other evidence setting out the loss or how he calculated the amount he is claiming. The Tenant indicated that he was intending to start moving in to the rental unit on May 12, 2019, which implies that he was going to take time off work for this process. The Tenant did not indicate how he was required to take more time off than anticipated. I find that the Tenants have not provided sufficient evidence to establish this monetary loss on a balance of probabilities. Accordingly, I dismiss this claim without leave to reapply.

The Tenants were unsuccessful in their Application, so I decline to award them recovery of the \$100.00 Application filing fee. I dismiss this claim without leave to reapply.

Conclusion

The Tenants were premature in applying for double the return of the security and pet damage deposits, as I found that the Tenants had not provided the Landlords with their forwarding address in writing. In the hearing, I advised the Parties that the forwarding address has now been provided to the Landlords as of the September 13, 2019 hearing. Accordingly, the Landlords have until **September 28, 2019** to return the Deposits to the Tenants in full or to apply for dispute resolution claiming against the Deposits.

The Tenants provided insufficient evidence to support their claim for lost wages, so this claim was dismissed without leave to reapply. The Tenants claim for recovery of the Application filing fee is dismissed without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 17, 2019

Residential Tenancy Branch