



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT, MNSD**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67;
- A return of the security and pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's application and materials. Based on the testimony I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the Act.

The landlord testified that they served the tenants with their evidence by registered mail sent to the forwarding address provided by the tenants. The landlord provided a valid Canada Post tracking number as evidence of service. The tenant disputed that they received the landlord's materials. Based on the evidence, including the valid tracking number provided by the landlord, I find that the tenants are deemed served with the landlord's materials in accordance with sections 88 and 90 and in any event sufficiently served in accordance with section 71 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the security and pet damage deposit for this tenancy?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

This periodic tenancy began in May 2016. The applicant JW is one of the tenants as indicated on the tenancy agreement and additional occupants were allowed to reside in the rental unit during the course of the tenancy. A security deposit of \$1,050.00 and pet damage deposit of \$1,050.00 were paid at the start of the tenancy. A condition inspection report was completed by the parties at the start of the tenancy.

The tenancy ended April 30, 2019. The parties were unable to agree on a time for a move-out inspection and the tenants did not participate in an inspection. The landlord submits that they provided the tenants at least 2 opportunities to schedule an inspection, first by email on April 24, 2019 and subsequently by a text message on May 1, 2019. The tenant testified that they were unable to attend and did not participate in a move-out inspection.

The tenants provided a forwarding address in writing by letter dated July 8, 2019. The landlord returned the amount of \$775.00 from the deposits. The landlord submits that the rental unit required cleaning and work and deducted the amount of \$1,325.00 from the deposits.

The tenants submit that they disagree with the landlord's assessment of damage to the rental unit, that they were not provided an opportunity to participate in a move-out inspection and that they did not authorize the landlord to make any deductions from the deposit for this tenancy. The tenant also testified that they believe the damage to the rental unit was caused by the other occupants of the property and that the tenants should not be held liable for the cost of cleaning.

The tenants indicated on their application that they are seeking a monetary award in the amount of \$3,156.00 but were unable to explain how they arrived at this figure. The tenant testified that they believe they picked the figure from an email correspondence but did not provide the correspondence nor were they able to articulate why they believed the correspondence provided this figure.

Analysis

The applicant JW is one of the tenants indicated on the lease agreement. I find the submission that the tenant is not liable for the condition of the rental property to be

wholly without merit. A tenant is responsible for the condition of the rental property and they cannot attempt to shield themselves from their responsibility by inviting other occupants onto the property.

Section 35 of the *Act* outlines the requirement for the landlord and tenant to inspect the condition of the rental unit at the end of the tenancy. The Act provides that the landlord must offer the tenant at least 2 opportunities for the inspection. Regulations 16 and 17 provide that the parties must attempt in good faith to agree on a date and time for a condition inspection.

I find that the landlord provided the tenants with opportunities to schedule and participate in a move-out inspection as required under the Act. I accept that the landlord sent correspondence inviting the tenants to provide their availability prior to the end of tenancy on April 30, 2019. I further accept that the tenants failed to respond with a time to schedule an inspection. I accept the evidence that the landlord subsequently offered the tenants an opportunity to participate in a move-out inspection on May 1, 2019 and, when the tenants failed to attend on that date, May 2, 2019. The tenants failed to attend at any of the dates proposed by the landlord.

I accept the parties' evidence that the tenants were invited to provide their availability prior to April 30, 2019, and were invited to participate in a condition inspection on May 1, 2019 and May 2, 2019 and failed to do so on each occasion. I find that the tenants failed to propose an alternative time for an inspection. I find that the landlord made reasonable efforts to provide the tenants with two opportunities to participate in a condition inspection. Consequently, pursuant to section 36(1) of the *Act* I find that the tenants have extinguished any right to claim against the security deposit and pet damage deposit by failing to participate in a condition inspection at the end of the tenancy.

The tenants dispute the landlord's assessment of the condition of the rental unit and submit that the charges for cleaning and repairs are unreasonable. I find that the tenants' submissions on this point to be irrelevant to the matter at hand. The tenants have extinguished their right to claim against the deposits for this tenancy through their failure to participate in a move-out inspection.

Furthermore, while the tenants indicated on their application that they are seeking a monetary award of \$3,156.00 the tenants were unable to explain how they chose this figure or the basis for a monetary award in this amount. The figure does not correspond

to the amount of the deposits for this tenancy still retained by the landlord nor does it appear to have any basis in the evidence submitted.

The onus to establish a claim on a balance of probabilities lies with the applicant and I find that the tenants have failed to meet their burden. The tenants have failed to demonstrate that the figure sought is based on any real amount or calculation.

For the reasons set out above, I dismiss the tenants' application in its entirety without leave to reapply.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

The landlord is authorized to retain the balance of the deposits for this tenancy in the amount of \$1,325.00.

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 24, 2020

Residential Tenancy Branch