Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROOSTER RIDGE FARMS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNRT, MNDCT

Introduction

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

- authorization to obtain a return of double the amount of the tenants' security deposit, pursuant to section 38; and
- a monetary order for the cost of emergency repairs and for compensation under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67.

The landlord's two agents, male landlord ("landlord") and "female landlord," and the two tenants, female tenant ("tenant") and "male tenant" (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 31 minutes.

The female landlord and the male tenant did not testify at this hearing. The landlord confirmed that he had permission to represent the landlord company named in this application, as an agent at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord stated that he posted a copy of the landlord's evidence to the tenants' door on January 20, 2021. The tenant confirmed that the landlord used the correct address. The tenant stated that she did not receive the landlord's evidence. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the

landlord's evidence on January 23, 2021, three days after its posting. I considered the evidence at the hearing and in my decision. I find that the landlord served the tenants at the correct address using a proper service method. I also note that the tenant submitted the written move-out agreement as part of her own evidence and the tenant had copies of the text messages between her and the landlord on August 23, 2020, which was the only evidence submitted by the landlord.

During the hearing, I explained the hearing and settlement process to both parties. Both parties confirmed that they were ready to proceed with the hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to replace the landlord company name, as the landlord confirmed the correct landlord owner name during the hearing. Both parties consented to this amendment during the hearing.

Issues to be Decided

Are the tenants entitled to a return of double the amount of their security deposit?

Are the tenants entitled to a monetary order for the cost of emergency repairs and for compensation under the *Act, Regulation* or tenancy agreement?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2020. Monthly rent in the amount of $900.00 was payable on the first day of each month. A security deposit of $450.00 was paid by the tenants and the landlord continues to retain this deposit in full. No written tenancy agreement was signed by the parties. No move-in condition inspection report was completed for this tenancy. A move-out condition inspection report was only completed by the landlord, without the tenant present. A written forwarding address was provided by the tenants to the landlord in person on September 30, 2020, by way of a letter.

The tenant claimed that this tenancy ended on September 20, 2020. The landlord said that the tenant left on September 27, 2020. The tenant claimed that she did not provide written permission for the landlord to keep the security deposit. She said that both parties signed a written agreement that the security deposit would be returned to the tenants if the rental unit was left without damages, which it was. The landlord stated that the agreement was for the tenant to vacate by September 1, 2020, but she did not do so. He said that the tenant agreed via text messages on August 23, 2020, for the landlord to keep the security deposit towards half a month's rent for September 2020. The tenant agreed that she sent those text messages, did not pay for September 2020 rent, but still should have got the security deposit returned by the landlord.

As per their application, the tenants seek a monetary order of $1,391.69. The landlord disputes the tenants' application.

Analysis

Damages and Repairs

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* are applicable and state the following, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …

7.17 Presentation of evidence
Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…

7.18 Order of presentation
The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

During the hearing, the tenants failed to go through any specific claims or the amounts for each claim. I find that the tenants did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

This hearing lasted 31 minutes, so the tenants had ample opportunity to present their application. During the hearing, I repeatedly asked the tenant if she wanted to present the tenants' application and tell me about their claims. However, the tenant failed to go through the tenants' documents that were submitted for this hearing. The tenant focussed more on arguing with the landlord about the fact that he did not have proper documentation, he did not give her a tenancy agreement, he increased the rent from $700.00 to $900.00, and she was entitled to leave the rental unit at the end of September 2020.

I dismiss the tenants' application of $491.69 without leave to reapply. This includes $149.00 ($18.00/hour for 8 hours) for lost wages to stand in line, get forms and obtain information regarding this hearing, paint supplies to fix repairs and repaint suite as told to do so by the landlord of $53.71, replacement of a pressure safety valve for a leaking hot water tank of $21.99, labour to install the valve of $50.00, and cleaning, sanding and painting the rental unit for the next tenant of $150.00 ($50.00/hour for 3 hours). The tenants again asked for $71.99 for the safety valve replacement and labour under a monetary order for the cost of emergency repairs. These amounts have been taken from the tenants' description in their application, which was not reviewed by the tenants at all during the hearing.

The tenants did not indicate the above amounts during the hearing. The tenants did not go through any invoices, estimates, quotes or receipts during the hearing. The tenants did not indicate whether costs were paid and if so, how and when they were paid.

Further, I find that the tenants are not entitled lost wages for filing and pursuing this application, as the only hearing-related fees recoverable under section 72 of the *Act*, are for the filing fee. The tenants also did not prove the $18.00 per hour cost with any documentary evidence.

Also, the tenants are not entitled to fees for cleaning or repairing the rental unit for the next tenant of $53.71 and $150.00, as the tenants are required to complete these tasks as per Residential Tenancy Policy Guideline 1. Moreover, the tenants did not provide documentary evidence to show the $50.00 per hour cost.

During the hearing, the tenants did not go through any documentary evidence or explain the claim during the hearing for the $71.99 cost for the safety valve replacement and labour, which cannot be claimed twice in any event.

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities and based on the testimony and evidence of both parties. I find that this tenancy ended on September 20, 2020, when the tenants claimed that they vacated the rental unit. It is undisputed that the tenants provided a written forwarding address on a letter delivered to the landlord in person on September 30, 2020.

I find that the written agreement signed by both parties for the landlord to return the security deposit to the tenants if the rental unit was “left clean and in good standing” (as noted on the agreement) was based on the fact that the tenants would vacate the rental unit by September 1, 2020 (as noted on the agreement). However, the tenants did not vacate by September 1, 2020.

I find that the tenants provided the landlord with written permission to keep the entire security deposit of $450.00 towards rent for September 2020. The tenant agreed during the hearing that the tenants did not pay any rent to the landlord for September 2020, despite living in the rental unit from September 1 to 20, 2020. I find that the text messages between the parties indicates that the tenants could remain in the rental unit during September 2020, if they paid half a month’s rent of $450.00 to the landlord. The landlord indicated that was the agreement between the parties. The tenant claimed that although the landlord asked her for rent in the text message, he did not ask her for it in person, so he is not entitled to it. I disagree.

The tenant agreed that she sent a text message to the landlord at 5:14 p.m. on August 23, 2020, in part (which I read aloud during the hearing):

> *“…So if you could please let us stay here until that tenant moves out and place is move in ready for us, you can keep our $450 damage deposit if that helps. We will moving out on the 20th all day, if you approve of our situation…”*

The tenant also agreed that the landlord sent a text message in response to her above text message, on August 23, 2020, in part (which the tenant read aloud during the hearing):

> *“I am okay with you staying until the 18th. However, I need you to pay the half months rent of $450 on the first of September.”*

The tenant agreed that she sent a response text message to the landlord at 7:59 p.m. on August 23, 2020 (which the tenant read aloud during the hearing), in part:

> *“I won’t be able to afford new place if I pay half of September rent. That’s why I said take the damage deposit bcuz there is no damage here.”*

Although text messages are not a permitted service method under section 88 of the *Act*, I find that both parties agreed that they used text messages as a method of communication and that the above text messages were exchanged. I find that the landlord was sufficiently served with the tenant's text messages to retain the security deposit, as per section 71(2)(c) of the *Act*.

I find that the tenants provided written permission for the landlord to keep their security deposit of $450.00 for September 2020 rent. Therefore, I find that the tenants are not entitled to the regular return of their security deposit of $450.00 or double the amount of their security deposit of $900.00. This portion of the tenants' application is dismissed without leave to reapply.

The landlord continues to hold the tenants' security deposit of $450.00. Over the period of this tenancy, no interest is payable on the deposit. I find that the landlord is entitled to retain the tenants' entire security deposit of $450.00 and I make an order for same.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I order the landlord to retain the tenants' entire security deposit of $450.00.

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 16, 2021

Residential Tenancy Branch