



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD (Tenants)
 MNDCL-S, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Tenants filed their application October 07, 2021 (the “Tenants’ Application”). The Tenants sought return of the security deposit and reimbursement for the filing fee.

The Landlord filed their application March 20, 2022 (the “Landlord’s Application”). The Landlord sought compensation for monetary loss or other money owed, to keep the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing with D.S., their mother and guarantor of the tenancy agreement. The Tenant appeared for all Tenants and the Occupant named on the Applications. The Landlord appeared at the hearing with N.C. to assist. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing packages and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Preliminary Issue

A preliminary issue arose in relation to who named on the Applications was a tenant or occupant of the rental unit at which times.

The Landlord submitted three separate written tenancy agreements, the first from 2018 to 2019, the second from 2019 to 2020 and the third from 2020 to 2021. The first and second agreements name F.H., I.P. and J.R. as tenants and D.S. as guarantor. The third agreement only names F.H. and J.R. as tenants and D.S. as guarantor.

The parties agreed M.Z. was never a tenant of the Landlord's and therefore I find M.Z. was an occupant with no rights or obligations under the tenancy agreements before me.

Further, the Tenant testified that I.P. moved out of the rental unit August 31, 2020. I find that a new tenancy agreement was created between the parties from 2020 to 2021 because the tenants named in the third agreement are not the same as the tenants named in the first and second tenancy agreements. A new tenancy was created when F.H. and J.R. entered into a tenancy agreement with the Landlord, without I.P. I.P. was not responsible for fulfilling the obligations of the third tenancy agreement because I.P. had moved out of the rental unit and was not named on the third agreement.

Given there were two separate tenancies between 2018 and 2021, separate Applications for Dispute Resolution should have been filed in relation to the tenancy that ended in 2020 and the tenancy that ended in 2021. However, the parties agreed at the hearing that I.P. can be removed from the Applications so that I can consider the matters raised which cover both tenancies. Given the parties agreement, I have decided the matters raised as they relate to F.H. and J.R. but not as they relate to I.P.

Issues to be Decided

1. Are the Tenants entitled to return of the security deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?
3. Is the Landlord entitled to compensation for monetary loss or other money owed?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

As stated, three separate written tenancy agreements were submitted. The most recent tenancy agreement started September 01, 2020, and was between F.H., J.R. and the Landlord, with D.S. as a guarantor. Rent was \$2,562.50 due on the first day of each month. A \$1,200.00 security deposit was paid.

The parties agreed the tenancy ended August 31, 2021.

Tenants' Application

The Landlord submitted the Condition Inspection Report (the "CIR") completed by the parties. The CIR shows J.R. agreed to the entire security deposit being kept by the Landlord for utilities due from August 2018 to August 2021. The Tenant did not dispute that J.R. signed the CIR.

Landlord's Application

The Landlord sought \$1,694.79 for outstanding utility bills. The Landlord testified that the Tenants were responsible for paying for utilities pursuant to each of the three tenancy agreements and therefore the Tenants are required to pay the outstanding utility bills.

The Tenant did not dispute that the three tenancy agreements state that the Tenants are responsible to pay for utilities and did not dispute the amount being sought. The only issue raised by the Tenant was that the Landlord did not give the Tenants the bills for the utility charges until August 30, 2021, the day before the tenancy ended. The Tenant testified that the Tenants were not aware of the outstanding utility bills and amounts during the tenancy and that August 30th was the first time the Tenants were notified of the utility bills. The Tenant submitted that the Tenants should not now have to pay for the outstanding utility bills when they were notified about them for the first time on August 30th.

When asked for a reply, the Landlord did not dispute that the Tenants were provided the utility bills in question for the first time on August 30th.

Analysis

Tenants' Application

Section 38(4) of the *Act* states:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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 J.R. agreed in writing at the end of the tenancy on the CIR that the Landlord could keep the security deposit and therefore the Landlord can keep the security deposit pursuant to section 38(4)(a) of the *Act*.

The Tenants' Application for return of the security deposit is dismissed without leave to re-apply.

The Tenants are not entitled to recover the filing fee because they have not been successful in the Tenants' Application.

The Tenants' Application is dismissed without leave to re-apply.

Landlord's Application

The Landlord can keep the security deposit pursuant to section 38(4)(a) of the *Act*.

In relation to the \$1,694.79 sought, section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I accept that the Tenants were required by the three tenancy agreements to pay for utilities because the parties agreed on this.

The Landlord provided an outline of the outstanding utility bills which are from 2018 to 2021.

I accept that the Landlord did not give the Tenants the utility bills for the amount sought until August 30, 2021, the day before the tenancy ended, because the Tenant testified to this, and the Landlord did not dispute this.

I find the Landlord waived their right to collect monies from the Tenants for the outstanding utility bills by not sending the bills to the Tenants and not seeking monies for the bills for three years and until the second to last day of the tenancy. The Landlord implicitly waived their right to collect monies from the Tenants for the outstanding utility bills by their actions which included taking no steps to notify the Tenants of the bills or collect monies owing for three years and until the second to last day of the tenancy. The Landlord could have re-instated their right to collect monies owing for the utility bills by giving the Tenants sufficient notice of their intention to do so; however, the Landlord did not do this. Providing the Tenants the bills on the second to last day of the tenancy, when all but one day included on the bills was for past use, is not sufficient notice to re-instate the Landlord's right to collect monies owing for utility bills. Given the Landlord waived their right to collect monies owing for utility bills, I decline to award the Landlord the \$1,694.79 sought. This claim is dismissed without leave to re-apply.

I decline to award the Landlord reimbursement for the \$100.00 filing fee because the Landlord was only successful in keeping the security deposit which was allowed by the Act and would have been decided on the Tenants' Application without the need for a further application for dispute resolution filed by the Landlord.

The Landlord's Application as it relates to the request for compensation for monetary loss or other money owed and reimbursement for the filing fee is dismissed without leave to re-apply.

Conclusion

The Landlord can keep the security deposit.

The Tenants' Application is dismissed without leave to re-apply.

The Landlord's Application as it relates to the request for compensation for monetary loss or other money owed and reimbursement for the filing fee is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 16, 2022

Residential Tenancy Branch