



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, MNDCT, FFT**

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the *Residential Tenancy Act* (the “Act”) for the return of their security deposit and pet damage deposit, for compensation for monetary loss or other money owed and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and Procedural Matters

At the outset of the hearing the tenants confirmed they received the landlord’s evidence in accordance with the Rules of Procedures. I note the landlord evidence is primarily related to damages caused by the tenants. That is not the issue before me and will not be considered.

The landlord stated that they did not receive the tenant’s evidence in accordance with the Rules of Procedures. The landlord stated that the tenant’s posted it to their door on August 31, 2022; however, they were not home at the time, and they did not have sufficient time to review the evidence and make a submission.

The tenants stated that it was posted to the door of the landlord on August 31, 2022.

In this case, I have reviewed the tenants’ evidence. The tenants evidence predates their application which was filed on February 2, 2022 and was available to be submitted

with their application. I find the tenants have failed to comply with the Rules of Procedure 2.5.

I further find that the tenants failed to comply with the Rules of Procedure 3.11 as their evidence must be served and submitted as soon as possible. The landlord was not served with the tenant's evidence until over seven (7) months later, by posting to the door on August 31, 2022. I find this an unreasonable delay.

Further, August 31, 2022, does not meet the requirements of Rules of Procedure 3.14, as the evidence must be received by the respondent no less than 14 days before the hearing, which was September 13, 2022. The calculation of time excludes the date it was received and the date of the hearing. Further, the evidence was posted to the door and was not deemed served until three days later on September 3, 2022.

I find the tenants' action of not complying with the Rules of Procedures 2.5, 3.11 and 3.14, is as unreasonable and a willful failure to comply with the Rules of Procedures. I refuse to accept or consider the tenants' evidence.

At the outset of the hearing, I questioned the tenants on their application for the return of the security deposit and pet damage deposit, as they indicated in their application that they did not provide the landlord with their forwarding address as required by the Act. The tenants confirmed it was not provided to the landlord prior to making their application.

I find the tenants' application for the return of the security deposit and pet damage deposit was made premature. As the tenants must provide the landlord with their forwarding address before making an application for it to be returned. As the landlord's obligation to return the deposits or claim against the deposit does not come into effect under the Act until the tenants meet this requirement. Therefore, I decline to hear the matter.

The tenants have multiple addresses for service in their application; however, to expedite the requirement of section 38 of the Act. The tenants confirmed their forwarding address at this hearing to be used for the return of the deposits or any application made by the landlord claiming against the deposits. I have noted this address on the covering page of this decision.

The landlord was informed at this hearing September 13, 2022, that they are now considered served with the tenants' forwarding address and must either return the

security deposit and pet damage deposit or make a claim against these deposits within 15 days. The forwarding address provided at the hearing is the serve address for all tenants.

Should the landlord fail to comply with section 38 of the Act. The tenants are granted leave to reapply for the return of their security deposit and pet damage deposit.

Issue(s) to be Decided

Are the tenants entitled to compensation for loss or other money owed?

Background and Evidence

The tenancy began on January 1, 2021. Rent in the amount of \$2,800.00 was payable on the first of each month. A security deposit of \$1,400.00 and a pet damage of \$1,400.00 was paid by the tenants.

The tenants testified that they found a new accommodation in December 2021, and the landlord agreed that they could end their tenancy on January 15, 2022. The tenants stated they paid prorated rent for January 2022 and vacated on January 15, 2022.

The tenants submit in their application the following

I am requesting our rent for the last 3 months due to being forced to move if we didn't pay an extra 700 for rent on new lease if we signed or landlord was going to sell the house if we didn't and not having heat or a working furnace in the winter with 6 kids in the house and living for the whole year with black mold and landlord neglected to do repairs and the water bill we had to pay due to the leak that wasn't fixed by landlord.

The tenants testified that there was a leak in the ceiling in the lower portion of the premises and due to this leak they were unable to use the bathroom, due to mold and as a result they should be entitled to the return of three months rent.

The landlord testified they were notified by the water department on July 13, 2021, that the water meter had been running continuously since July 11th. The landlord stated upon investigation it was determined that the tenants had left the hose and the damage was caused by the action of the tenants.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I am not satisfied that the tenants have proven any of their claim. The claim for the last 3 months rent is an allegation that they were forced to move if they did not pay an extra \$700.00 for rent on a new lease or the home would be sold.

The tenants had the right to continue to live in the rental unit, if the tenancy agreement did not have a vacate clause, without entering into a new lease. however, the landlord always has the right to sale the property, even when tenanted.

I have no evidence before me that would support that the tenants were force out of the property, such as the landlord locking them out of the rental unit. Further, the tenants indicated they gave notice to the landlord in December 2021 and the landlord agreed that they could vacate on January 15, 2022, and rent was even prorated. I find the parties agreed to mutually end the tenancy on January 15, 2022.

Further, the tenants' submission indicate they did not have heat or a working furnace in the winter and living with black mold for an entire year. While I accept their may have been an issue with the bathroom ceiling that occurred in July of 2021; however, I do not accept the tenants suffered any loss of the use of the bathroom as that is not what is indicated in their details of dispute. Further, if the damage was caused by the actions of the tenants leaving the hose on, it would be their responsibility to make the repair.

Further, the tenants provided no evidence or testimony that they did not have heat or a working furnace in the prior winter. I find if the tenants were without any heat in the winter, it would have been reasonable for them to make an emergency application for repairs. Not claim for compensation after the tenancy is over.

Based on the above, I dismiss the tenants' application for compensation without leave to reapply.

Conclusion

The tenants' application for the return of the security deposit and pet damage deposit was filed premature as they did not give the landlord their forwarding address prior to making their application for its return.

At the hearing the landlord was given the tenants forwarding address and the landlord must comply with section 38 of the Act. Should the landlord failed to comply with section 38 of the Act the tenants are granted leave to reapply for the return of the deposits.

The tenants claim for compensation for loss or other money owed is dismissed without leave.

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: September 16 2022

Residential Tenancy Branch