Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MNR, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of double the security and pet deposits. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence and Analysis

Both parties agree to the following: The tenancy began on October 31, 2013 and ended on December 22, 2013. The tenants were obligated to pay $4250.00 per month in rent in advance and at the outset of the tenancy the tenants paid a $2000.00 security deposit and a pet deposit of $2000.00. Neither a move in or move out condition inspection report was conducted. The tenant provided their forwarding address to the landlord on December 22, 2013.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I first address the tenants claim and my findings as follows.

Tenants Claim - The tenants stated that they provided their forwarding address on December 22, 2013. The tenants stated that the landlord has yet to return any monies. The landlord acknowledged receipt of the tenants forwarding address on December 22, 2013. The landlord stated that she did not return the deposits due to the very poor condition the unit was returned to her and the costs she incurred because of the tenants.

The tenants stated that they are applying for the return of double the security deposit as the Landlord has not complied with the s. 38 of the *Residential Tenancy* Act.

Section 38 (1) says that 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.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As the landlord has not complied with this section I find that the tenants are entitled to the doubling provision as outlined above. The tenants believe that they have posted security and pet deposits for a total amount of $4250.00 however the signed tenancy agreement reflects $4000.00. Based on the signed tenancy agreement I find that the tenants are entitled to $4000.00 X 2 = $8000.00.

I will deal with the landlords claim and my findings as follows.

Landlords Claim – The landlord is seeking $14, 830.24 for the costs to clean the unit, repair some damages to the unit, to replace broken or missing items to the unit and the replacement cost of jewellery and antique artifacts. The landlord stated that the tenants had left the unit extremely dirty, damaged and left behind “a ton of stuff”. The landlord submitted many estimates as part of her claim. The tenants adamantly dispute this claim. The tenants stated that this was an extremely difficult tenancy and that they felt harassed from the start of it. The tenants agreed to a $7.50 phone bill but dispute the balance of the claim. The tenants stated that the unit was “far from mint condition” at move in. The tenants stated that they had to hire professional cleaners at the start of tenancy to make the unit habitable. The tenants stated that this unit is continually advertised on the internet for rental and that they should not be liable for ten years of wear and tear over a 7 week period.

In relation to the condition of the rental unit, I find that in the absence of a documented move in Condition Inspection Report or other documentary evidence to confirm the condition at the start of the tenancy the landlord cannot provide sufficient evidence to support that the tenants caused any damage to the rental unit. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The tenant accepts responsibility for the $7.50 phone charge and I grant the landlord that amount. The landlord has not provided sufficient evidence to support the remainder of her claim and I therefore dismiss this balance of her application.

Using the offsetting provision of section 72 of the Act I “offset the landlords’” award of $7.50 against the tenants’ award of $8000.00 and I find that the tenants are entitled to monetary order of $7992.50.

I decline to make a finding in regards to the filing fee and each party must bear that cost.

Conclusion

The tenant has established a claim for $7992.50. I grant the tenant an order under section 67 for the balance due of $7992.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 21, 2014

Residential Tenancy Branch