



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPB, MND, MNDC, MNSD, FF
MNSD

Introduction

This hearing was scheduled in response to 2 applications:

- i) by the landlord for an order of possession for breach of an agreement / a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security deposit / and recovery of the filing fee; and
- ii) by the tenants for a monetary order reflecting return of all or part of the security deposit.

Both tenants attended and gave affirmed testimony. The landlord did not appear.

The tenants testified that they served the landlord with the application for dispute resolution and the notice of hearing (the “hearing package”) by way of registered mail. Evidence provided by the tenants includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was “successfully delivered” on July 06, 2015. Based on the documentary evidence and the affirmed / undisputed testimony of the tenants, I find that the landlord has been duly served in accordance with the Act.

The tenants testified that the landlord’s hearing package was served on them by way of registered mail.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Further to 2 applications, documentary evidence is limited to "3 statements" submitted by the tenants. No documentary evidence has been submitted by the landlord.

The tenants testified that pursuant to a written tenancy agreement the month-to-month tenancy began on June 01, 2013. Monthly rent of \$2,300.00 was due and payable in advance on the first day of each month, and a security deposit of \$1,150.00 was collected. It is understood that a move-in condition inspection report was completed with the participation of both parties.

On April 29, 2015 the tenants gave notice to end tenancy effective May 31, 2015. The tenants removed all their possessions from the unit by May 08, 2015, and had arranged for the unit to be professionally cleaned on May 16, 2015. In the meantime, the tenants relocated to another city on May 09, 2015. As it is understood that the landlord anticipated showing the unit during the week of May 11, 2015, the parties agreed that she could withhold \$100.00 from the security deposit for purposes of making her own arrangements for unit cleaning. By email contact between the parties, further to authorizing the withholding of \$100.00 from the security deposit for unit cleaning, the tenants authorized the withholding of \$70.00 for replacement of 2 damaged fridge trays.

A move-out condition inspection was scheduled to occur on May 23, 2015, with male tenant "ROL's" mother attending the unit and participating on their behalf. However, the landlord did not appear and male tenant "ROL's" mother left behind in the unit the tenants' forwarding address in writing.

Another move-out condition inspection was scheduled to occur on May 31, 2015, with a friend of the tenants attending the unit and participating on their behalf. However, again the landlord did not appear and the tenants' forwarding address was once more left behind in the unit in writing.

The landlord then formally notified the tenants of a final opportunity to conduct a move-out condition inspection. In the result, a move-out condition inspection was conducted on June 02, 2015, and a friend of the tenants participated on their behalf with the landlord. The tenants testified that while it appears that the landlord undertook to complete a move-out condition inspection report on that occasion, a copy was not provided either to their friend, or later to them. To date, no portion of the tenants' security deposit has been repaid to them.

The landlord filed her application for dispute resolution on June 05, 2015. Further to an order of possession, in her application the landlord seeks to retain an amount from the tenants' security deposit which is over and above the \$170.00 previously authorized by them. The tenants filed their application on June 16, 2015. In their application the

tenants seek return of the balance of their security deposit of \$980.00, which reflects authorized deductions in the total amount of \$170.00.

Analysis

At the outset, the attention of the parties is drawn to the following legislation:

ACT

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

REGULATION

Part 3 – Condition Inspections (sections 14 to 21)

Further, the attention of the parties is drawn to section 37 of the Act which addresses **Leaving the rental unit at the end of a tenancy**, in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and.....

Based on the documentary evidence and affirmed / undisputed testimony of the tenants, the various aspects of the respective applications and my findings are set out below.

LANDLORD

Order of possession

The landlord's reasons for applying for an order of possession are not clear. In any event, as the tenancy is ended this aspect of the application is hereby dismissed.

\$100.00: *“normal” cleaning services*

As the tenants consented to this particular withholding from their security deposit, I find that the landlord has established entitlement to the full amount claimed.

\$100.00: *“extra” cleaning*

\$100.00: *labour, services, travel time and gas*

\$97.87: *labour and materials for miscellaneous repairs*

\$525.00: *labour and materials for miscellaneous tile repairs*

In the absence of the comparative results of move-in and move-out condition inspection reports, or invoices or receipts in support of any of the costs claimed, these aspects of the landlord's application are hereby dismissed.

\$73.80: *miscellaneous costs related to refrigerator repairs*

For reasons identical to those set out immediately above, the amount of \$3.80 included in the above claim is hereby dismissed. As the tenants authorized the landlord's withholding of **\$70.00** for fridge-related repairs, I find that the landlord has established entitlement limited to that amount only.

\$50.00: *filing fee*

In the absence of any evidence from the landlord, in view of the landlord's absence from the hearing which was scheduled in response to applications by both parties, and in light of the landlord's entitlement to funds limited to those previously authorized by the tenants for withholding from the security deposit, I find that the landlord has failed to meet the burden of proving entitlement to recovery of the filing fee. This aspect of the application is therefore dismissed.

Total entitlement: \$170.00 (\$100.00 + \$70.00)

TENANTS

\$980.00: *balance of security deposit after authorized deductions (\$1,150.00 - \$170.00)*

As set out above, the landlord has established entitlement to withholding of \$170.00 from the tenants' security deposit of \$1,150.00. The landlord's application to retain funds in excess of this amount from the security deposit has been dismissed. Accordingly, I find that the tenants have established entitlement to full recovery of the balance as claimed.

\$21.00: *interest on security deposit*

The attention of the parties is drawn to the “deposit interest calculator” which is accessible on the Residential Tenancy Branch website. Pursuant to the results of the calculator, no interest was accrued on a security deposit held in trust by the landlord between the time when it was collected near the start of this tenancy, and the issue date of this Decision. Accordingly, this aspect of the application is dismissed.

Total entitlement: \$980.00

Following from all of the above the landlord is hereby ordered that she may withhold **\$170.00** from the tenants’ security deposit of **\$1,150.00**.

The landlord is further ordered to repay the balance of the security deposit to the tenants in the amount of **\$980.00** (\$1,150.00 - \$170.00), and I grant the tenants a **monetary order** in their favor to that effect.

Conclusion

The landlord is ordered that she may withhold **\$170.00** from the tenants’ security deposit.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$980.00**. Should it be necessary, this order may be served on the landlord, 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: November 12, 2015

Residential Tenancy Branch

