



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord applied for authorization to retain the tenants' security deposit. The tenants applied for return of double the security deposit and compensation under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing, the landlord requested that his application be amended to reflect the lesser amount of the security deposit he was still holding since the tenants had already recovered one-half of the security deposit. I amended the landlord's application accordingly.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation equal to or greater than the security deposit?
2. Are the tenants entitled to doubling of the security deposit?
3. Have the tenants established an entitlement to compensation for damages or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The parties executed a two year fixed term tenancy agreement that provides for a tenancy to commence on September 1, 2016 and end on August 31, 2018. The tenants were required to pay rent of \$1,875.00 on the first day of every month. The tenants paid a security deposit of \$1,875.00.

The tenancy ended on February 28, 2017 pursuant to a notice to end tenancy they emailed to the landlord on January 25, 2017 and sent to the landlord via registered mail on January 25, 2017. The tenants deducted the over-paid portion of the security deposit in the amount of \$937.50 from the rent payment for February 2017. The landlord continues to hold the balance of the security deposit of \$937.50 pending the outcome of this proceeding.

A move-in inspection report was not prepared by the landlord. The landlord did not prepare a move-out inspection report.

Landlord's Application

The landlord filed his application on March 14, 2017 and seeks to retain the security deposit of \$937.50 for three reasons: the tenants ended the fixed term tenancy early; additional cleaning of the unit was required; and, the tenants removed a pony wall without the landlord's permission. The landlord initially testified that he replaced the pony wall which cost him approximately \$800.00. The landlord subsequently testified that he hired someone to clean and make the repair to the pony wall at a cost of approximately \$1,250.00. The landlord stated that he had an invoice for the cleaning and repairs but that he did not submit it as evidence or serve it to the tenants and that he did not have it in front of him during the hearing. The landlord testified that he found new tenants for the unit in early March 2017 and then he changed his testimony to say it was closer to mid-March 2017. The landlord provided photographs but did not provide any receipts or invoices or a copy of the tenancy agreement for the incoming tenants.

I found the landlord's changing testimony in the absence of corroborating evidence to be insufficient proof of the losses he suffered, if any, and I dismissed the landlord's claims against the tenants without hearing a response from the tenants.

Tenant's application

The tenants provided their forwarding address to the landlord by way of their notice to end tenancy sent via email on January 25, 2017 and mailed to the landlord on January 25, 2017. The tenants seek return of double the security deposit on the basis the landlord over-charged the security deposit at the start of the tenancy. The tenants pointed to section 4, subsection 3) as the basis for seeking double. The tenancy agreement is that which is published by the Residential Tenancy Branch. In section 4 it states:

(1) The landlord agrees

- (a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property,
- (b) to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation, and
- (c) to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless
 - (i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or
 - (ii) the landlord makes an application for dispute resolution under the *Residential Tenancy Act* within 15 days of the end of the tenancy agreement to claim some or all of the security deposit or pet damage deposit.

(2) The 15 day period starts on the later of

- (a) the date the tenancy ends, or
- (b) the date the landlord receives the tenant's forwarding address in writing.

(3) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or pet damage deposit, and**
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both.**

- (4) The tenant may agree to use the security deposit and interest as rent only if the landlord gives written consent.

The landlord did not deny that he collected a security deposit equivalent to the monthly rent at the start of the tenancy but pointed out that the tenants deducted the overpayment from rent payable for February 2017.

The tenants seek compensation of \$4,673.48 for electrical work performed on the rental unit during their tenancy. The tenants provided an invoice for this amount dated October 24, 2016 identifying a corporation as being the service provider. The tenant stated he is an electrician and did the work with the landlord's knowledge and agreement. The landlord stated he did not agree to pay the tenants \$4,673.48. I noted that there was no written agreement between the parties with respect to electrical work or a linkage to the tenancy in the documents submitted as evidence. The tenant indicated there was an email listing the work that was to be performed but acknowledged it was not submitted as evidence.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's application

The landlord alleged the tenants breached the fixed term tenancy agreement by ending it early and did not leave the rental unit reasonably clean and undamaged at the end of the tenancy. While these actions may be breaches of the Act, I find the landlord failed to

demonstrate that he suffered a loss as a result of the breaches, if any. Therefore, I dismiss the landlord's claim against the tenants.

In keeping with Residential Tenancy Policy Guideline 17, since the landlord's claims against the tenants have been dismissed and the landlord is still holding the tenants' security deposit of \$937.50 I order the landlord to return the security deposit to the tenants without further delay. Provided to the tenants with this decision is a Monetary Order in the amount of \$937.50 to ensue payment is made.

Tenants' application

As provided in section 38(1) of the Act, a landlord has 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to: return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit pursuant to section 38(6) of the Act.

In this case, the landlord filed to make a claim against the security deposit within 15 days of the tenancy ending and I am satisfied the landlord met his obligation under section 38(1) of the Act and I find the tenants are not entitled to doubling of the deposit.

Although the landlord collected a security deposit that exceeded the permissible amount at the start of the tenancy, the tenant's remedy is provided under section 19(2) of the Act. Section 19(2) provides that the tenant may deduct the over-payment from rent or otherwise recover the over-payment, which the tenants did by deducting the over-payment from February 2017 rent. The remedy for over-payment of a security deposit is not doubling of the deposit. Therefore, I dismiss the tenants' request for doubling of the security deposit.

With respect to the section 4, subsection (3) of the tenancy agreement, as pointed to by the tenants as a basis for doubling of the security deposit, I am of the view that subsection (3) conflicts with the remedies provided in the Act. As explained above, a tenant's remedy for overpayment of a security deposit is provided in section 19 of the Act, which does not provide for doubling, and the requirement for a landlord to pay a tenant double the security deposit is provided under section 38 of the Act. The doubling provision of section 38 is consistent with a violation of section 4, subsection (1)(c) of the

tenancy agreement. Accordingly, it appears to me that subsection (3) contains a typographical error and should be written to say “If a landlord does not comply with subsection (1)(c). As provided under section 6 of the Act, where a term in a tenancy agreement is inconsistent with the Act, the term is not enforceable. Therefore, I have applied the provisions of section 38 of the Act in determining whether the tenants are entitled to doubling of the security deposit and I have not enforced section 4(3) of the tenancy agreement.

As for the tenants’ claim for compensation for electrical work done on the rental unit, I find I am unsatisfied that this is a matter over which I have jurisdiction. My jurisdiction is limited to tenancy agreements between a landlord and a tenant. Not every contract between a landlord and a tenant falls under the Act, such as contracts for services entered into between a landlord and a tenant. Only where a contract for services can be linked to the tenancy agreement may I take jurisdiction to resolve a dispute involving a contract for services, such as where compensation for the services rendered is to be obtained by withholding rent payable under the tenancy agreement. In this case, the invoice provided by the tenants identifies a third party as being entitled to payment for services rendered, not the tenants. Further, it does not appear that there was an agreement for the tenants to recover compensation for the work performed by deducting it from rent since no such deductions were made and I was not provided any written documentation or indication from the landlord that the landlord agreed to such. Nor, was I provided written documentation or confirmation from the landlord that the landlord had agreed to pay the tenants or reimburse the tenants for the amount claimed. Therefore, I find I am unsatisfied that the compensation sought by the tenants for electrical work performed on the rental unit constitutes damages or loss under the Act, regulations or tenancy agreement and I decline to take jurisdiction to resolve the matter.

As the parties were informed during the hearing, disputes involving a contract for services are to be resolved in the appropriate forum, such as Small Claims court.

Since neither party was successful in their respective application, I make no award for recovery of the filing fee paid by either party.

Conclusion

The landlord’s application was dismissed. A portion of the tenants’ application was dismissed and I declined jurisdiction to resolve the other portion.

Since the landlord's claims against the tenants was dismissed and the landlord is still holding the tenant's security deposit, I order the landlord to return the security deposit to the tenants and I provide the tenants with a Monetary Order in the amount of \$937.50 to serve and enforce if necessary.

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: August 10, 2017

Residential Tenancy Branch