



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, MNSD, MNDC, FF, CNL

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession on the basis of the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied to cancel the landlord's 2 Month Notice pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Landlord NT (the landlord) confirmed that she was the owner of the rental property, and that her father DT had acted as her agent at various times during the course of this tenancy.

At the commencement of this hearing, the female tenant SLK confirmed that the correct spelling of her legal first name was as it appears in the style of cause at the beginning of this decision. With the agreement of the parties, I made this minor amendment to the spelling of her first name.

At the start of this hearing, both parties confirmed that the tenants vacated the rental unit on September 16, 2017. For that reason, the tenants withdrew their application for dispute resolution as they were no longer seeking the cancellation of the landlords' 2 Month Notice.

The landlord also withdrew the landlords' application for an Order of Possession on the basis of the 2 Month Notice as she already has possession of the rental unit. She also withdrew the application for a monetary award for unpaid rent, as she understood that the tenants were entitled to refrain from paying rent for September 2017, the last month

of their tenancy, as a result of the landlords' issuance of the 2 Month Notice to the tenants. She also withdrew her application for a monetary award for loss of rent for October 2017, explaining that she included this in her application because she was uncertain as to whether the tenants would indeed vacate the rental unit prior to this hearing. Each of these aspects of the landlords' application are hereby withdrawn.

The remaining issues arising out of these applications revolved around the landlord's request that she be allowed to retain the tenants' \$325.00 security deposit for damage arising out of this tenancy, as well as the recovery of the landlords' \$100.00 filing fee.

As Tenant RM (the tenant) testified that he was handed the landlords' 2 Month Notice on July 29, 2017, I am satisfied that the tenants were duly served with this Notice in accordance with section 88 of the *Act*.

As both parties confirmed that they received one another's dispute resolution hearing packages, I find that these documents were served to one another in accordance with section 89 of the *Act*. I also accept that the tenants served the landlord with their preliminary written evidence along with their dispute resolution hearing package, containing a copy of their signed residential tenancy agreement and the landlords' 2 Month Notice in accordance with section 88 of the *Act*.

The tenants testified that they did not provide the landlords with a copy of their late written evidence package, a copy of which was provided to the Residential Tenancy Branch. Since this information was not served to the landlords, I have not considered this evidence in reaching my decision. The landlord confirmed that they did not submit any written evidence for this hearing.

Issues(s) to be Decided

Are the landlords entitled to retain all or a portion of the tenants' security deposit in satisfaction of the monetary award requested for damage to the rental unit? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy commenced on November 1, 2015. Monthly rent was set at \$650.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$325.00 security deposit paid on November 1, 2015.

The parties confirmed that the tenants did not pay any rent for September 2017. The tenant gave undisputed sworn testimony that the tenants did not provide any written notice to the landlords that they were planning to vacate the rental property on September 16, 2017, prior to the September 30, 2017 effective date of the landlord's 2 Month Notice. He said that the tenants vacated the rental unit on very short notice once a truck became available for their move.

The landlord testified that she believed that a joint move-in condition inspection was conducted at the beginning of this tenancy. She had no details regarding this inspection, and testified that no report of that joint move-in condition inspection was created by the landlords. The tenant gave undisputed sworn testimony that there was a short "walk through" with Landlord DT at the beginning of the tenancy, but he did not return to complete a proper joint move-in inspection and did not provide the tenants with any form of written report of the move-in inspection. The landlord testified that no joint move-out inspection occurred, the landlord did not conduct her own move-out inspection, and no report was created of any move-out condition inspection.

Analysis

Since the tenants did not provide any written notice to end their tenancy earlier than the September 30 effective date of the landlords' 2 Month Notice, their entitlement pursuant to section 51(1) of the *Act* to compensation equivalent to one month's rent for being issued the 2 Month Notice is for the entire month of September.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day...*

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion...

Section 24(2) of the Act reads in part as follows:

24 *(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

Sections 35 and 36 of the Act establish similar provisions for joint move-out condition inspections and reports of those inspections.

At the hearing, I advised both parties that the landlords failed to abide by the provisions of section 23 of the Act, and, as such, the landlords' right to claim against the security deposit for damage arising out of this tenancy is extinguished. I also note that the provisions of section 35 regarding the move-out condition inspection were also not followed by the landlord, which would also have led to the extinguishment of the landlords' ability to claim to retain any portion of the security deposit. Following from the above legislative provisions, and in the absence of either a move-in or move-out condition inspection report, I find that the landlord's entitlement to a claim against the tenant's security deposit is extinguished.

As outlined below, section 38(1) of the Act establishes when a landlord is required to return a security deposit to tenants:

38 *(1) 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.

Since the landlords' ability to claim against the security deposit has been extinguished, the landlords have to return the tenants' security deposit within 15 days of the later of the end of the tenancy or the tenants' provision of their forwarding address in writing.

At the hearing, the tenant testified that the tenants only recently obtained an accurate mailing address. He said that the tenants have not yet sent the landlords a written request to return their security deposit to them at their new mailing address.

Under these circumstances, I find that the 15 day time period for the landlords' return of the tenants' security deposit has not yet been activated. As noted at the hearing and as I find that the landlords' ability to claim for damage against the security deposit has been extinguished, the landlords are required to return the tenants' security deposit in full plus applicable interest within 15 days of receiving the tenants' forwarding address in writing. The parties confirmed that the tenants have the landlord's correct mailing address as noted in the landlord's application for dispute resolution.

At the hearing, the landlord provided only sworn testimony regarding any damage to the rental unit. Without a proper record of the condition of the rental unit at the beginning of the tenancy, any photographs of the condition of the rental unit at either the beginning or end of this tenancy, or any receipts from the landlords regarding damage arising out of this tenancy, I also dismiss the landlords' application for a monetary award for damage arising out of this tenancy without leave to reapply.

As the landlords have been chiefly unsuccessful in their application, I issue no order regarding the landlords' application to recover their filing fee from the tenants.

Conclusion

The tenants' application to cancel the 2 Month Notice and the landlords' application to obtain an Order of Possession on the basis of the 2 Month Notice are withdrawn.

The landlords' application for a monetary award for unpaid rent is withdrawn.

I dismiss the remainder of the landlords' application without leave to reapply. In so doing, I also find that the landlords' right to claim against the tenants' security deposit is extinguished.

Although I dismiss the landlords' application to retain the tenants' security deposit without leave to reapply, I issue no order at this time requiring the landlord to return the tenants' security deposit. I refrain from issuing an order because the tenants have not yet provided the landlords with their forwarding address in writing. Once this occurs, the landlords will be required to return the tenants' security deposit in accordance with the provisions of section 38 of the *Act*. Failure to do so may expose the landlords' to further action by the tenants to obtain a doubling of the monetary award for the return of the security deposit pursuant to the provisions of section 38(6) of the *Act*.

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 01, 2017

Residential Tenancy Branch