



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR FF
Tenant: MNDC MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was made on April 16, 2018 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on April 13, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss; and
- an order granting the return of all or part of the security deposit and/or pet damage deposit.

The Landlords were represented at the hearing by H.K. Although M.K. also attended the hearing, she did not participate. The Tenant attended the hearing on her own behalf. H.K. and the Tenant provided affirmed testimony.

On behalf of the Landlords, H.K. testified that the Landlords’ Application package and documentary evidence was served on the Tenant by registered mail. The Tenant acknowledged receipt. The Tenant testified the Tenant’s Application package and documentary evidence were served on the Landlords in person. H.K. acknowledged receipt on behalf of the Landlords. No issues were raised with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord claimed \$425.00 in unpaid rent. However, H.K. testified the Landlords' intended claim was for \$850.00 but was reduced by \$425.00 because the Landlords hold the \$425.00 security deposit. I find it was clear the Landlords sought to recover a full month of rent, not only \$425.00. Accordingly, pursuant to section 64(3) of the *Act*, I amend the Landlords' Application to reflect the intended claim of \$850.00.

In addition, the Landlords' Application was brought by H.K. The Tenant's Application was made against M.K. and B.B.K., whose names appear on the tenancy agreement. With the agreement of the parties, and pursuant to section 64(3) of the *Act*, I amend the Applications to include the names of the 3 Landlords involved in this dispute.

Issues

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
2. Are the Landlords entitled to an order granting recovery of the filing fee?
3. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Tenant entitled to an order granting the return of all or part of the security deposit or pet damage deposit?
5. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed that a month-to-month tenancy began on February 1, 2016. Although there was disagreement about what precipitated the end of the tenancy, the parties agreed the Tenant vacated the rental unit on April 1, 2018. Rent in the amount of \$850.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$425.00, which the Landlords hold.

The Landlords' Claim

The Landlords claim \$850.00 for unpaid rent. According to H.K., the parties entered into a Mutual Agreement to End a Tenancy, dated February 15, 2018 (the "Mutual Agreement"), which ended the tenancy on March 1, 2018. However, as noted above, the parties agreed the tenancy ended on April 1, 2018, at which time the Tenant vacated the rental unit. A copy of the Mutual Agreement was submitted into evidence.

In reply, the Tenant testified she signed the Mutual Agreement but that the dates were blank when she did so. She stated she was advised by the Landlords that family members would be occupying the rental unit. The Tenant testified the end date of the tenancy had not been determined at the time she signed the Mutual Agreement.

In addition, the Tenant testified to her belief she was evicted. As noted above, the Tenant stated the Landlords told her family members would be coming to live at the rental property. The Tenant testified she was provided with a notice to end tenancy but that the Landlords took it back and shredded it.

On behalf of the Landlords, H.K. denied filling in dates on the Mutual Agreement after it was signed, or shredding documents.

The Tenant's Claim

The Tenant's claim was described in the Application. First, the Tenant claimed compensation in the amount of \$850.00. Although the basis for this aspect of the claim was unclear, she testified to a proposed rent increase presented by the Landlords but never implemented. The Tenant also testified to her belief she was evicted, which might have been the basis of a claim for compensation if the Landlord did not do what was provided as a reason for ending the tenancy.

Second, the Tenant claimed \$425.00 for the return of the security deposit. She testified she provided the Landlords with her forwarding address on April 13, 2018. A hand-written note bearing that date was submitted into evidence.

In reply, H.K. denied the Tenant is entitled to compensation as claimed. First, he confirmed the Tenant was not evicted but that the parties entered into the Mutual Agreement so the Tenant could live with her mother. Although denied as a basis for ending the tenancy, the Tenant confirmed during the hearing that she is currently living with her mother.

In addition, H.K. noted he made the Landlords' Application only 3 days after receiving the Tenant's forwarding address in writing, and acknowledged he has not been required to return it until the matters in dispute are decided upon.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find:

The Landlords' Claim

In this case, I find it is more likely than not that the parties entered into the Mutual Agreement, which ended the tenancy on March 1, 2018. However, the parties confirmed the Tenant remained in the rental unit until April 1, 2018, a month later. I find that the Tenant over held and did not pay rent. Accordingly, I find the Landlords are entitled to a monetary award of \$850.00 for unpaid rent.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Landlords' Application. In addition, I find it is appropriate to order that the Landlords are entitled to apply the security deposit held in partial satisfaction of the Landlords' Application. Accordingly, pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary award of \$525.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$850.00
Filing fee:	\$100.00
LESS security deposit:	(\$425.00)
TOTAL:	\$525.00

The Tenant's Claim

With respect to the Tenant's claim for \$850.00 in compensation, I find it is more likely than not that the parties agreed to end the tenancy as indicated on the Mutual Agreement. Further, I find there is insufficient evidence before me that the Landlords issued a notice to end tenancy that might have given rise to a claim for compensation, or that any such notice to end tenancy was shredded by the Landlords. I find that this aspect of the Tenant's Application is dismissed.

With respect to the Tenant's claim for \$425.00 for the return of the security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. In this case, I find the Tenant provided the Landlord with her forwarding address in writing on April 13, 2018. Therefore the Landlord had until April 28, 2018, to repay the deposit or make a claim against it. The Landlord made a claim against the security deposit on time on April 16, 2018. As I have found the Landlords are entitled to retain the security deposit in partial satisfaction of the Landlords' claim, I find the Tenant is not entitled to the return of the security deposit. This aspect of the Tenant's Application is dismissed.

The Tenant's Application is dismissed, without leave to reapply.

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

The Landlord is granted a monetary order in the amount of \$525.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 25, 2018