



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREENWAY REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDC MNSD

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on November 8, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- To cancel a 1-Month Notice to End Tenancy for Cause (the Notice);
- A monetary order for the return of the security deposit;
- A monetary order for compensation for loss or other money owed.

Both the Landlord and the Tenants attended the hearing and provided testimony. The Landlord acknowledged receipt of the Tenants' evidence package, including the application, evidence and amendment. The Tenants acknowledged receipt of the Landlord's evidence packages. Neither party took issue with the service of any of these documents.

The Tenants stated that they moved out on October 31, 2018. Given that the tenancy is over, I dismiss their application to cancel the Notice, without leave, as neither party needs an order of possession.

Both parties were provided the 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to compensation for loss or money owed?

Background and Evidence

Both parties agree that the Tenancy ended on October 31, 2018, and a move out inspection was done on that date. The Landlord also acknowledged getting the Tenants' forwarding address in writing on this day. Both parties also agree that monthly rent was \$1,075.00.

The parties disagree on how much deposit was held by the Landlord. The Landlord stated that they only hold \$525.00 as a security deposit, and that they hold no pet deposit. The Landlord provided a copy of the tenancy agreement which shows that a security deposit of \$525.00 was collected, and the pet deposit portion of the agreement is left empty. The Tenant agrees that \$525.00 was paid as a security deposit but also stated that they paid \$525.00 as a pet deposit. The Tenant did not provide any further evidence to support that this deposit was paid. The Landlord also provided a copy of the move-out inspection report which is signed by the Tenant and indicates that there was only \$525.00 held as a security deposit. On this move-out inspection report, the Landlord indicated that there were outstanding utility bills, and some other expenses relating to cleaning, and painting. However, many of these items were listed with no dollar amount, and although the Tenant signed and acknowledged this part of the move-out condition inspection report, there is no amount listed on the total "balance due" section. As such, it is not clear what amount the Tenants agreed that the Landlord could retain from the \$525.00 security deposit.

In the hearing, the Tenants stated that they did not agree to the Landlord withholding anything from the security deposit, despite signing this portion of the form. The Landlord stated that the deductions were not fully known at the time of the move-out inspection, which is why many of those fields were left with "to be estimated".

The Tenant provided a monetary order worksheet which speaks to the following items:

1. \$525.00 – Security Deposit – The Tenants want their security deposit back
2. \$525.00 – Pet Deposit – The Tenants want their pet deposit back

3. \$2,300.00 – 2 Months compensation – The Tenants want two months' compensation because they were illegally evicted and because they read somewhere in the Act that they should get two months' compensation if they had to move out.

The Landlord stated that they had several issues with the Tenants. The Landlord stated that back in the Spring of 2018, they noticed that the Tenants had too many occupants, and some unlicensed trailers and vehicles on the property. The Landlord stated that they issued a couple of written warnings, along with follow up inspections. The Landlord denies stalking and harassing the Tenants as they have alleged and stated that they were just trying to manage the property. The Landlord stated that she eventually issued the Notice to End Tenancy on September 21, 2018, because the issues were not being dealt with.

The Tenants disputed this Notice on September 28, 2018, but in the hearing they stated they moved out anyways. The Tenants do not feel the reasons in the Notice were valid, so they feel they should get two months' rent as compensation.

4. \$5,000.00 - "Mental Damages" – The Tenants stated that since there are 5 of them, they are asking for \$1,000.00 each, totalling \$5,000.00 for the mental damages they suffered. The Tenants did not elaborate and explain this item further, other than stating they were wrongfully evicted, and should be compensated.

The Landlord stated that the eviction was not wrongful, and they were not sure how to respond to this claim, as they did not understand the basis for it.

5. \$500.00 – Compensation for the Trailer – The Tenants stated that after getting written warning from the Landlord that they had to move their trailer, they felt they had to sell it at a loss. The Tenants stated that they should get \$500.00 because they should not have had to sell the trailer. The Tenants stated that the trailer did have insurance.

The Landlord stated that the trailer did not have insurance, and more importantly, it was blocking the driveway allocated to the other rental unit. The Landlord stated that the other rental unit complained, which is why they asked the Tenant to move the trailer.

6. \$2,000.00 – Moving Costs – The Tenants stated that since they were illegally forced to move, they should be compensated for moving costs.

The Landlord stated that they did nothing illegal and should not have to pay for this.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Section 38(1) of the *Act* requires a landlord to repay the security or pet deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit, unless the parties have reached an agreement with respect to any deductions from the deposits.

First, I turn to the issue of the pet deposit. I note both parties disagree as to whether or not a pet deposit was paid. The Tenants stated they paid a pet deposit. However, I note they were unable to provide any evidence to support that one was paid. The Landlord stated that no pet deposit was received, and provided a copy of the Tenancy Agreement, which does not indicate that a pet deposit was actually collected. Further, the Tenant signed the move-out condition inspection report, which indicates that there was a security deposit, and no pet deposit. After considering all the evidence before me, I find it more likely than not that the Landlord did not hold a pet deposit, as such, I dismiss the Tenants' request for the return of the pet deposit (item #2), without leave.

Next, I note the Landlord received the Tenants' forwarding address on October 31, 2018, the day the move-out inspection was completed. I note the Tenants signed this agreement, and indicated that they agreed to the Landlord deducting the noted expenses from their security deposit of \$525.00. However, I also note that the Landlord did not have an understanding what the costs were at that time, so I find it unclear what exactly the parties agreed to. I also note the Landlord did not fully fill out this portion of the form, including what was due. Ultimately, although the Tenants signed this portion of the form, and indicated they were okay with some deductions from the security deposit, I find it unclear what they agreed to, since the amounts were not available at that time. The Landlord believed this was an agreement for them to be able to keep all of the deposit. However, the Tenants did not have this understanding.

Typically, when a Landlord receives a Tenant's forwarding address in writing, they have 15 days to return the deposit, or file an application against it, unless the parties make an agreement. Since the agreement as to what deductions were authorized by the Tenants is so vague and that portion of the form is only partly filled out, I find it is not sufficiently clear as to allow the Landlord to retain this deposit as part of this proceeding. In this case, I find the Tenants are entitled to the return of the security deposit. However, I decline to give the Tenants double the security deposit, pursuant to section 38(6) of the Act because there was some agreement, although unclear, with respect to what to do with the security deposit. Although I order the return of this security deposit as part of this hearing, in full, due to the unclear agreement about what the costs the Tenants had to pay, the Landlord is granted leave to reapply for monetary compensation if they feel they have a claim for damage or loss as a result of the tenancy.

Next, I turn to the 3rd, 4th and 6th items on the Tenants' monetary order worksheet. I note the Tenants are looking for two months compensation, for \$5,000.00 in "mental damages", and for moving costs as a result of the wrongful and illegal eviction. However, I find there is insufficient evidence that the Tenants were illegally evicted. The evidence before me establishes that the Tenants were issued warnings for several things, and eventually were issued a 1 Month Notice to End Tenancy for Cause. I note the Tenants now dispute the validity of the issues behind the Notice, but the Tenants could have remained in the rental unit, and disputed those claims at this hearing, which is what was set to happen at today's hearing. However, the Tenants moved out and accepted that the tenancy would end, rather than disputing the Notice. I find there is insufficient evidence that the Landlord acted unlawfully, or improperly, and it appears the Tenants left and accepted the Notice, rather than disputing it, and attempting to stay in the rental unit. Further, it is unclear why the Tenants feel they are entitled to 2 month's rent in compensation. Although the Tenants stated they read this somewhere in the Act, I note that this type of compensation is typically used when a Landlord issues a different type of Notice, for different reasons. It does not apply to 1-Month Notice's to End Tenancy for Cause. I dismiss the Tenants' application on these 3 items, without leave to reapply.

Next, I turn to the Tenants' request for item #5. The Tenants stated that after getting written warning from the Landlord that they had to move their trailer, they felt they had to sell it at a loss. The Tenants stated that they should get \$500.00 because they should not have had to sell the trailer. I note the parties dispute whether or not the trailer had insurance. However, the Landlord stated that they asked the Tenants to move it, in part,

because it was blocking access for one of the other rental units. The Tenants did not speak to this or refute this point. I find there is insufficient evidence to establish that the Landlord should be responsible for this amount, and for paying the Tenants because they had to sell it at a loss. It appears to be a reasonable request from the Landlord to have access restored to the other unit, and it was up to the Tenant where they moved the trailer to, whether they would sell it, and what they chose to sell the trailer for. I dismiss this portion of the Tenants' application, without leave.

In summary, I find the Tenants are entitled to a monetary order in the amount of \$525.00, which represents the return of the security deposit. The Landlord is entitled to apply for monetary compensation for damage or loss if they have suffered damage or loss as a result of the tenancy.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$525.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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 9, 2018

Residential Tenancy Branch