



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

One of the landlords and both tenants attended the conference call hearing and the tenants called one witness. The parties provided evidentiary material in advance of the hearing, however 2 packages provided by the tenants were not provided within the time provide for in the *Residential Tenancy Act*. The landlord did not oppose inclusion of the late evidence, and therefore, that evidence has been admitted. The parties and the witness all gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witness on the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues were identified with respect to service of the Landlord's Application for Dispute Resolution or notice of hearing documents.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The parties agree that this month-to-month tenancy began on March 1, 2012 and ended on July 31, 2012. Rent in the amount of \$900.00 per month was payable in advance on the 1st day of each month. In February, 2012 the landlords collected a security deposit from the tenants in the amount of \$450.00 as well as a pet damage deposit in the amount of \$50.00, all of which is still held in trust by the landlords. The tenants provided the landlords with a forwarding address in writing on August 3, 2012. No move-in or move-out condition inspection reports were completed.

The landlord testified that the tenants did not pay rent for the months of May, June or July, 2012 but the landlord has no proof. The landlord further testified that a notice to end tenancy was not served on the tenants, so the landlord is only claiming unpaid rent for the month of July, 2012 in the amount of \$900.00.

The landlord also testified that the tenants had given the landlord written notice on June 1, 2012 to vacate the rental unit by June 30, 2012 but overstayed for a month, and the landlord waited for rent to be paid but the tenants didn't pay. In the meantime, the landlord advertised the rental unit for rent and collected a security deposit in the amount of \$100.00 cash and a cheque in the amount of \$350.00. The landlord had to return the cheque and the cash to that tenant because the rental unit wasn't vacant. However, in the middle of July, 2012 the tenants hadn't found a place to move to and on July 10, 2012 the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The landlord further testified that the tenants did not return the keys to the rental unit at the end of the tenancy and the landlord had to replace the locks at a cost of \$22.99 and provided a copy of a receipt to substantiate that testimony. The landlord's husband does renovations for a living on residential premises and the landlord stated that 2 locks were required but the landlord already had one to use, and a usual charge is \$100.00 per lock, for which the landlord claims \$130.00 for labor as against the tenants for replacing the 2 locks.

The landlord further testified that the tenants left the rental unit without cleaning, and the landlord claims \$96.30 for that service. A copy of an invoice in that amount, as well as photographs of the interior of the rental unit was provided for this hearing.

The landlord also testified that the tenants had a cat and new tenants in the rental unit have no pets. The landlord testified that the rental unit was left by the tenants with

fleas, and the landlord claims \$106.40 for flea removal and provided a receipt for that cost.

The landlord also claims \$300.00 as against the tenants for advertising and 5 showings for the month of July although the tenants didn't move out. Further, the landlord was accused of fraud by the tenant who paid the security deposit which required police involvement.

The first tenant testified that there are no rental arrears; the tenants paid rent every month and the landlord asked that they pay cash. The tenants trusted the landlord and were never issued a receipt.

The tenant also testified that when the tenants moved in, there was debris left from previous tenants, such as clothes, blankets, kitchen supplies, bottles, garbage, litter box and furniture in the yard. The stove was not clean, and the tenants asked the landlord for a fire alarm which was installed. The landlord also told the tenants that the previous tenants had pets. The tenants did not notice any fleas in the rental unit but had serious ant problems. Ants were in the fridge and counters and the landlords did nothing, although the tenants notified the landlords, so the tenants bought ant traps.

At the end of the tenancy, the landlord had asked the tenant to drop off the key to the rental unit, and the tenant went to do so and called the landlord at least 10 times, leaving messages, but the landlord wouldn't answer. The tenant disagrees that the landlord is entitled to recovery of a fee for changing locks.

The other tenant testified that rent was paid every month and the landlord told the tenants it was okay to pay rent after the first of the month.

The tenant also stated that the photographs provided by the landlord are not dated and the tenants did not leave the pile of garbage as shown in the landlord's photographs. The tenants left the rental unit clean. When the tenants moved in, the fridge wasn't clean and it took the landlords a long time to cut the lawn which caused an infestation of ants. The landlords would not tend to issues raised by the tenants. A copy of the notice to end tenancy provided by the tenants to the landlord was provided for this hearing and it states that the reason for ending the tenancy is the landlords' failure to respond to tenants' issues.

The tenant further testified that the tenants did not receive a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities from the landlord. The landlord told the tenants that the landlords wanted the tenants to stay, saying they were the best tenants the landlords ever had.

The tenant further testified that the tenants told the landlord they could not attend at the rental unit by 1:00 p.m. on July 31, 2012 and the parties had agreed they would meet later in the day. When the tenants arrived at 2:00 p.m., new tenants were there but the landlord could not be reached. The tenants did not want to leave the key, but kept calling the landlord.

The tenants' witness testified that the condition of the rental unit was seen by this witness at the outset of the tenancy, and the rental unit had not been cleaned. There was garbage left over from previous tenants and the witness noticed plumbing and electrical issues were not up to code and witnessed mould in the bathroom. The rental unit was cleaner after the tenants moved out than when they moved in. The witness is the father of one of the tenants.

The witness also testified that the tenants asked the witness to attend the rental unit for viewings in July for perspective renters, and he did so. On July 31, 2012 the witness viewed a text message to the landlord from the tenants. The witness drove the tenants to return the key to the rental unit but the landlord did not respond.

The witness also testified that he witnessed the landlord write in a book when rent was paid on 2 occasions during the tenancy, but the landlord did not provide a receipt.

Analysis

Firstly, with respect to the landlord's application for a monetary order for damage to the unit, site or property, I find that the landlord has failed to satisfy me that the tenants failed to comply with the *Residential Tenancy Act* with respect to cleaning the rental unit. The landlord has not provided a move-in or a move-out condition inspection report and testified that the reports were not completed. Both tenants and the tenants' witness testified that the rental unit contained numerous items left behind from previous tenants and the rental unit was not clean at the outset of the tenancy. The *Act* states that a landlord is to provide a tenant with a rental unit that is maintained in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. A tenant is required to leave a rental unit

reasonably clean except for normal wear and tear. Where a landlord makes a claim for cleaning or damages to rental property which is disputed by the tenant, the onus is on the landlord to prove that the rental unit was provided to the tenant in a state that makes it suitable for occupation by a tenant and that any damages to the rental unit were not existing damages from the outset of the tenancy. I am not satisfied that the landlord has proven that the tenants did not reasonably clean the rental unit prior to vacating or that the rental unit was clean before the tenants moved in.

The landlord had an obligation to provide the tenants with at least 2 opportunities to conduct a move-out condition inspection report, and that is when keys to a rental unit are usually returned to a landlord. The landlord stated that the tenants didn't show up on July 31, 2012 at 1:00 and the tenants and the tenants' witness testified that the parties were to meet later in the day. The tenants and the witness arrived later in the day and the landlord did not answer the phone, or return messages or meet the tenants. The tenants did not feel comfortable leaving the key with a new tenant who was already in the rental unit, so the tenants continued to attempt to reach the landlords. The landlords failed in that obligation, and therefore, the landlords' application for new locks cannot succeed.

I further find that the landlords have failed to prove that the tenants are responsible for a flea infestation. The tenants testified that the landlord had told them that the previous tenants had pets, and that testimony is not disputed by the landlord. The tenants also testified that the landlord failed to deal with an ant problem in the rental unit and the tenants bought ant traps. I find that the landlords have failed to establish that the tenants are responsible for the flea infestation and the landlords' application for recovery of flea removal costs must be dismissed.

With respect to the landlords' claim for showing the rental unit, I find that the landlords may be required to show a rental unit and if the tenants do not vacate when required, a landlord may be able to prove a claim. However, in this case, the tenants and the tenants' witness testified that there were showings in July and the tenancy ended on July 31, 2012. There is no evidence before me that the tenants failed to cooperate, and the landlord's application for the inconvenience cannot succeed.

With respect to the landlords claim for unpaid rent, the landlord testified that the tenants failed to pay rent for May, June and July, 2012 but the landlord can only prove July so that's all the landlord is claiming. In my view, the landlord has failed to prove any unpaid rent. The *Residential Tenancy Act* requires a landlord to issue a receipt for any rent paid in cash. The tenants testified that the landlord requested cash and never issued any receipts. The tenants' witness testified that no receipts were issued on 2 occasions when he was present, and he witnessed the landlord note the payments in a

book. Further, the tenants testified that the landlord did not serve a notice to end tenancy. The landlord provided a copy of a notice which states that the tenants failed to pay rent in the amount of \$900.00 that was due on July 1, 2012. If the landlords were not paid rent for the months of May, June or July, 2012, I do not accept that the landlords would only request one month of rent on a notice to end tenancy. I find that the landlords have failed to establish any claim for unpaid rent.

With respect to the security deposit and pet damage deposit, having found that the landlords are not entitled to a monetary order as against the tenants, the landlords must return the entire security deposit and pet damage deposit to the tenants pursuant to Section 38 of the *Residential tenancy Act*.

Conclusion

For the reasons set out above, the landlord's application is dismissed in its entirety without leave to reapply.

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 30, 2012.

Residential Tenancy Branch