



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC MNSD FF

This hearing dealt with an application by the tenants for a monetary order for the amount of the security deposit and pet damage deposit, applicable accrued interest, double the security deposit, and recovery of the costs of improvement of the rental unit that was authorized by the landlord.

The tenancy began on November 1, 2007. The tenants paid a security deposit of \$950.00 on August 13, 2007 and a pet damage deposit of \$600.00 on November 1, 2007. The tenancy ended on November 3, 2008. The tenants provided the landlord with their written forwarding address sometime between November 3 and November 15. In mid November, the landlord deducted some cleaning and repair charges from the security deposit and returned a balance of \$713.30 to the tenants. The tenants did not agree with the deductions made by the landlord and the landlord has not applied for dispute resolution.

The landlord maintained that the tenants gave him permission to make these deductions by signing the move out condition inspection report dated November 3, 2008. Section 38(4)(a) of the *Residential Tenancy Act* requires such permission to be given by the tenants in writing and to be specific as to the amount to be retained. I note that while the move out condition inspection report dated November 3 lists the items to be cleaned and repaired, it does not specify the amount required to address these damages. Furthermore, the tenants contended that the landlord added two items: “dog shit in yard” and “painting touch ups” after they signed the document. The tenants pointed out that these

items were written in darker ink. I note that these two items are in darker ink than the rest of the document. Based on the above, I find that the tenants have not given written permission for the landlord to retain a portion of their security deposit as required by section 38(4)(a).

Section 38 of the *Act* also requires that 15 days after the later of the end of tenancy and the tenants providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenants are entitled to recovery of double the base amount of the security deposit. I find that the tenancy ended on November 3, and that the tenants provided their forwarding address in writing sometime between November 3 and 15. I further find that the landlord has failed to repay the security deposit in full or make an application for dispute resolution within 15 days of receiving the tenants' forwarding address in writing.

I find that the tenants have established a claim for the security deposit and pet damage deposit of \$1550.00, accrued interest of \$30.35, and double the base amount of the security deposit in the amount of \$1550.00, for a total of \$3130.35.

The tenants are also claiming for compensation for a fence extension. They said that the landlord had authorized them to increase the height of their fence and promised to reimburse them for the costs of the work. The tenants added that at the time, the landlord even suggested adding a lattice to the top of the existing fence. The tenants proceeded with the improvement and gave the landlord a receipt for \$400.00 for this work. The tenants said that in September, the landlord drove by the property and commented on how he liked the fence extension. On this occasion, the landlord again promised to reimburse them for the costs of the work. Sometime after the tenants moved out, the landlord changed his mind about reimbursing the tenants. During the hearing, the landlord did not dispute 1) that he had authorized the fence extension; 2) that he had promised the tenants to reimburse them and; 3) the costs incurred in doing

the work. He disputed however, that the fence extension is two feet in height and therefore in breach of city bylaws. When asked if he has provided written documentation from the city regarding this breach, the landlord said that he had obtained only a verbal opinion from the city. The tenants added that while they and the landlord had an agreement to proceed with the fence extension and their reimbursement, they had no agreement with respect to either the look or the size of such an extension. Based on the above, I find that the landlord and the tenants did have an agreement for the tenants to proceed with the fence extension and for the landlord to reimburse them for the costs of the work. The tenants have established a claim for \$400.00 for the costs of the fence extension.

The tenants are also entitled to recovery of the \$50.00 filing fee for this application. I order the tenants to retain the partial refund of their security deposit and pet damage deposit of \$713.30 and I grant the tenants an order under section 67 for the balance due of \$2867.05. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: January 19, 2009