



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the landlord - MND, MNDC, FF

For the tenant - MNSD, FF

Introduction

This decision deals with two applications for Dispute Resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The landlord seeks a Monetary Order for damages, for compensation for damage or loss under the *Residential Tenancy Act* (Act), regulation or tenancy agreement and to recover their filing fee. The tenants seek the return of their security deposit and to recover their filing fee.

Both parties served the other party in person with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the Act with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the landlord established a monetary claim due to the damage to the rental unit Is the tenant entitled to receive double the security deposit back?
- Is either party entitled to recover their filing fee?

Background and Evidence

This tenancy started on February 01, 2008. Rent for this unit was \$885.00 and was due on the 1st of each month. The tenants paid a security deposit of \$425.00 on January 07, 2008.

The tenants ended the tenancy and moved from the rental unit on June 15, 2009. The tenants gave the landlord their forwarding address in writing on this day. The tenants testify that when they moved into the rental unit the landlords' agent was not available to carry out the move in condition inspection, he had left the forms and asked the tenants to complete these when they moved in. The tenants did this and took the forms to the landlords' agents' office as he would need to sign them. The tenants testify that they did not receive a copy of this inspection report after the landlords' agent had signed it. When the tenants moved from the rental unit a move out condition inspection was carried out and signed by the tenants. However, they did not receive a copy of this report.

The tenants testify that on June 26, 2009 the landlords agent called them to discuss the costs he had incurred for cleaning services, carpet cleaning and for painting and repair to anchor holes in the walls. The tenants went to the landlords' agents' office to see the bills for this work and to ask for copies of the move in and move out condition inspection reports. The tenants agree that they did not clean the carpets and some other areas and agree to pay the landlord for these costs. However, they claim the costs for painting and repairs are extreme as this was normal wear and tear. They claim they used standard sized wall anchors to hang pictures and a shelf and removed these at the end of the tenancy. They claim that when they moved into the unit it had not been decorated and that a landlord is responsible for decorating at reasonable intervals.

The landlord testifies that the tenants did not comply with a term of the tenancy agreement. Section 18 of this agreement states that a tenant must not use hooks, nails, tape or other devices for hanging pictures or for affixing anything to the structure unless it has been approved by the landlord or with the landlords prior consent. The landlord claims the tenants did not seek

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his permission to hang pictures or a shelf and caused a number of large holes in the walls when they removed the wall anchors and these had to be filled, sanded and repainted.

Analysis

With regard to the landlords claim for damages to the rental unit, I find the tenants did not gain the landlords permission to use anchors on the walls to hang pictures and a shelf. I accept that the tenants have used this form of standard wall anchors on other properties they have rented from the landlord and have had no problems in the past. However, I find that the tenants should have filled the holes in the walls when they removed the wall anchors and find the landlord is entitled to recover a percentage of his costs for filling in these holes, sanding and touch up painting to an amount of \$200.00. I find that the tenants are not responsible to pay for redecorating the remainder of the unit as a landlord would be responsible to carry out redecoration at reasonable intervals and the move in condition inspection report notes that the walls were marked at the start of the tenancy.

The tenants have argued that the landlord is not entitled to keep their security deposit as he did not comply with the *Act* with regards to the move in and move out condition inspection by being absent from the move in inspection and by not giving the tenants copies of either inspection within the specified time period. However, the landlord has not applied to keep the tenants security deposit but has applied for a monetary amount for damages to the rental unit.

I find the tenants gave the landlord their forwarding address in writing on June 15, 2009. The landlord had 15 days to return the security deposit or apply for Dispute Resolution to keep all or part of it. The landlord did not return the tenants security deposit and did not apply to keep it. Therefore, pursuant to section 38 (6)(b) the tenants are entitled to recover double the security deposit from the landlord. The tenants have agreed to pay the landlords cleaning costs to an amount of \$161.70 and have agreed that this amount may be deducted from the security deposit. A Monetary Order has been issued to the tenants for the following amount:



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Double the security deposit	\$850.00
Filing fee	\$50.00
Less amount tenants agree to pay for cleaning costs	\$161.70
Less amount awarded to the landlord for damage to the rental unit for filing holes, sanding and touch up painting	\$200.00
Total amount due to the tenants	\$544.57

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$544.57**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

I HEREBY find in partial favor of the landlords monetary claim for damages to the rental unit and have awarded the landlord the sum of **\$200.00**. This amount has been deducted from the tenant's monetary award.

I find that the tenants and landlord must bear the costs for filing their own applications.

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 02, 2009.

Dispute Resolution Officer