



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the landlord – MNSD, FF

For the tenants – MNDC, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the landlord and one brought by the tenants. Both files were heard together. The landlord seeks to keep the security and pet damage deposits and to recover the filing fee. The tenants seek a monetary Order for compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement, the return of the security and pet damage deposits and to recover the filing fee.

The parties served the other 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

- Is the landlord entitled to keep all or part of the security and pet damage deposits?
- Is the landlord entitled to recover the filing fee?
- Are the tenants entitled to a Monetary Order for compensation for damage or loss?
- Are the tenants entitled to the return of their security and pet damage deposits plus any accrued interest?

- Are the tenants entitled to recover their filing fee?

Background and Evidence

This tenancy originally started on June 01, 2007 and a new tenancy agreement was entered into on April 01, 2008 when the landlord bought the property from the previous landlord. This is a month to month tenancy and rent is \$850.00 per month and is due on the 1st of each month. The tenants paid a security deposit of \$400.00 and a pet damage deposit of \$200.00 on May 08, 2007.

The landlord seeks to retain the tenant's security deposit. He testifies that the tenants gave him notice to end tenancy on August 05, 2009 to end the tenancy on August 30, 2009. The landlord states that this was not the one month notice required under the tenancy agreement. The landlord was unable to re-rent the property until October 03, 2009. The landlord has requested to keep the tenants security deposit in partial payment of one months rent for September, 2009.

The landlord also testifies that the tenants kept a pit bull dog that caused some damage by scratches to the inside of the front door and damaged a cedar tree in the garden. The trunk of the tree was griddled up to the height of three feet which has caused the tree to die. The landlord has requested to keep the tenants pet damage deposit to cover this loss.

In response to the landlords claims the tenant's testify that the front door is metal and had not been painted with the correct paint which has caused the paint to chip and peel over the term of their tenancy. They state that this is normal wear and tear and was not caused by their dog. The tenant's testify that the dog is a kennel dog and is kept in a kennel at all times except to eat or go outside. The tenants also claim their dog did not cause the tree to die. The tree was hit by a neighbour's five ton truck. At this time the tree was bent over and the landlord tied it back up but the trunk was cracked to the base of the tree and they claim this is what caused the tree to die. The tenants testify that they decided to give the landlord one months notice to end the tenancy due to issues with the tenancy on July 26, 2009. However, the landlord was not available and had not left an emergency contact number where he could be reached in order for them to

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contact him. They left numerous messages at his home and he did not return their calls until August 04, 2009. They meet with the landlord on August 05, 2009 and gave him their Notice. The landlord was requested to sign the Notice to show he had accepted that the tenancy would end on August 30, 2009. The tenants have produced in evidence this signed notice to end tenancy.

The landlord claims that he was back in town on or about July 31, 2009 and he did not have any messages from the tenants on his answer machine. The tenants state that if the landlord was home he did not respond to their messages or answer his phone about the fridge not working again and their complaints about losing their food.

The landlord and tenants both agree that no move in condition inspection was carried out with the previous landlord and when the new tenancy agreement was put in place the landlord did not do an inspection of the property at that time. The tenant's testify that at the end of the tenancy they asked the landlord to carry out a move out inspection and were told by the landlord that they did a good job with the housekeeping. No inspection was carried out by the landlord.

The tenants testify their dryer broke down and they were without these facilities for one month. During this time the tenants had to use a dryer at the Laundromat and were drying approximately 10 to 15 loads a week at a cost of \$3.00 per load. The tenants also testify that in 2008 the fridge broke down for the first time and they lost all the food in the fridge and freezer to an amount of \$300.00. In July 2009 the fridge broke down again for 12 days and they lost most of the food items. The tenant's claim they attempted to save the food for as long as possible by keeping the door of the fridge closed. They believe the cost of the ruined food was between \$290.00 and \$320.00. On this occasion they were without a fridge for 12 days in high temperatures and had to shop for small amounts of food each day, eat out or get take away food. The tenants testify that they made numerous attempts to contact the landlord who had not provided them with an emergency contact number over the twelve days. The tenant's estimate that they either eat out or got takes always meals around 15 times during the 12 days at a cost of \$20.00 to \$30.00 per meal. The tenants have not provided any receipts for these items as they did not intend to make a claim for compensation at that time.

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The tenants also claim that the landlord had raised their rent above the allowable amount. The landlord approached them and told the tenants that in future they would either have to pay for their own repair costs to the appliances or pay an additional \$50.00 per month in rent. The tenants unknowingly paid the rent increase of \$50.00 as they were worried what it would cost if the appliances broke down again.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regards to the landlords claim that the tenants did not give him one full months notice to end the tenancy, I find the landlord was not available at the end of July when the tenants first tried to contact him about the problems they had been having with their fridge and they decided to give the landlord written notice to end the tenancy. I find I prefer the evidence of the tenants as to the attempts made to contact the landlord and because, by the landlords own admittance, he did not return the tenants calls until August 04, 2009 and had not given the tenants an emergency contact number where he could be reached, the tenants did what they could to give the landlord one clear months notice. In this matter I find the landlord is not entitled to recover rent for September for a lack of notice by the tenants because he did not give the tenants an emergency contact number and the tenants should not be penalized because of this. The tenants acted in good faith in trying to contact the landlord in order to give him their notice to end the tenancy and this notice is dated July 31, 2009. The landlord has signed this notice and accepted that the tenancy would end at the end of August, 2009

With regard to the landlords claim to keep the tenants pet damage deposit I find the landlord has not provided sufficient evidence to support his claim that the tenants dog damaged the front door or the cedar tree. It is reasonable to assume that if a five ton truck runs into a tree and the trunk is split then the tree may die. The landlord does not dispute that the tree was hit by the truck and he did tie the tree up to support it at the time. I also find that no move in or move out condition inspection was completed pursuant to section 36(2) of the Act. Therefore, the landlord has extinguished his right to claim against the security deposit or pet damage deposit. Without

any other corroborating evidence to support the landlords claim this section is dismissed without leave to reapply.

With regard to the tenant's claim for compensation for damage or loss under the *Act*. I have applied the following test:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the tenants to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenants claim for compensation does not meet all of the components of the above test. The tenants have not submitted sufficient evidence to support their claim of \$1,375.00 in the form of receipts for laundry or food items. As to the tenants claim for the loss of food items the tenants have provided photographs of some food items however this is not sufficient evidence to corroborate how much food was lost and the steps they took to mitigate their loss. Neither have the tenants provided any evidence to show that they had to eat out or get take away food rather than shop and cook food at home or any receipts for these meals. However, I do accept that the tenants did lose the use of their dryer for one month and that their fridge broke down on two separate occasions. As the landlord has not disputed this testimony I find the tenants are entitled to some compensation for the loss of these facilities to an amount of **\$500.00**.

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With regard to the tenants claim for an unlawful rent increase, I find the landlord did impose a rent increase on the tenants without three months written notice and he did not use the approved form. This increase was also above the amount allowed for 2008/09 pursuant to section 42 and 43 of the *Act*. The correct amount the landlord could have increased the rent was by 3.7% in 2008. Therefore the rent could have been increased by \$29.60 per month. The tenants are entitled to recover the overpayment of **\$265.20** (\$20.40 X 13 months).

The tenants have requested the return of their security and pet damage deposit plus any accrued interest. As the landlord has not been successful with his claim against these deposits I find the tenants are entitled to have them returned.

As the tenants have been partially successful with their claim they are entitled to recover the **\$50.00** filing fee paid for this application. As the landlord has been unsuccessful with his claim he must bear the cost of filing his own application. A Monetary Order has been issued to the tenants for the following amount:

Compensation for damage or loss	\$500.00
Security deposit	\$400.00
Pet damage deposit	\$200.00
Accrued interest on both deposits	\$14.96
Filing fee	\$50.00
Total amount due to the tenants	\$1,430.16

Conclusion

The landlords' application is dismissed in its entirety, without leave to reapply.

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,430.16**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.



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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: December 01, 2009.

Dispute Resolution Officer