



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenants – MNSD

For the landlord – MND, MNR, MNSD, MNDC, 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 damage to the rental unit, site or property, for unpaid rent, for money owed or compensation for damage or loss under the Act and to recover the filing fee. The landlord has also applied to keep the tenants security deposit. The tenants seek the return of double their security deposit.

Both 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 witness, 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

- Did the tenants give the landlord their forwarding addresses in writing?
- Are the tenants entitled to receive double the security deposit back?
- Is the landlord entitled to a Monetary Order to cover the additional costs for repair to damages and cleaning of the rental unit?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?



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- Are there outstanding utilities owed by the tenant to the landlord?
- Is the landlord entitled to compensation for damage or loss under the *Act* and if so how much?

Background and Evidence

This tenancy started on August 01, 2008. This was a fixed term tenancy for one year with an expiry date of August 01, 2009. The tenants left the rental property on August 31, 2009. Rent for this property was \$1,500.00 per month plus utilities. This was due on the 1st of each month. The tenants paid a security deposit of \$750.00 of this \$500.00 was paid on July 19, 2008 and \$250.00 was paid on July 26, 2008.

The tenants claim they gave the landlord their forwarding address in writing on October 06, 2009 when they dropped this off in his mailbox. They claim that the landlord has not returned their security deposit and as such they claim double the amount of the security deposit plus any accrued interest.

The landlord claims he did not receive the tenants forwarding address in writing. After the tenants moved from the rental property they moved to separate addresses. The landlord claims he knew where the female tenant was moving to but did not have any knowledge where the male tenant had moved to.

The landlord claims that this was his parent's home and when they passed away he assumed responsibility for it and decided to rent it. The landlord claims that at the start of the tenancy he agreed the tenants could move in despite the fact that the house was not completely ready. He had a verbal agreement with the tenants that they do not dispute that they would clean the house and do some painting. The landlord agrees that at the start of the tenancy no move in condition inspection was carried out. At the end of the tenancy the landlord claims he went to the house and found that the tenants had left the house unclean with many damages.

The landlord claims he attempted to hire a cleaning lady to clean the property but after viewing the house she declined the job due to the high level of cleaning that was required. The landlord

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has provided a letter in evidence from the cleaning lady pertaining to the level of cleaning required in the house. The landlord had to undertake the cleaning himself and is claiming his labour costs for this along with his labour to carry out some of the repairs. The landlord has charged for his labour at \$25.00 per hour for the following amounts:

Wash windows, drapes and coverings	2 hours - \$50.00
Replace and fix window screens	4 hours – \$100.00
Repair window below the deck	1 hour - \$25.00
Fix, stain and finish four interior doors	3 hours - \$75.00
Steam clean basement carpets	4hours - \$100.00
Repair three bi-fold closet doors	2 hours - \$50.00
Clean house, trim yard, yard work and disposal of garbage	15 hours - \$375.00
Replace basement toilet seat	0.5 hours - \$ 12.50
Replace 17 out of 22 light bulbs	3 hours - \$75.00
Replace damaged light fixtures in dining room, hall and two bedrooms	1.5 hours - \$37.50
Remove and reinstall hood fan	1 hour - \$25.00
Reinstall cable wire and repair drywall	0.5 hours \$12.50
Replace, fix and adjust kitchen knobs and hinges	1 hour - \$25.00
Replace screen on deck	0.5 hours \$12.50
Replace draw strings and adjust four balcony blinds	1 hour - \$25.00
Two days lost wages for hearing preparation at \$355.00 per day	\$710.00

The landlord also claims an amount of \$153.91 for materials used to make the repairs. The landlord claims he used some of his own materials from his house for some of the damages in order to reduce the overall amount and therefore mitigate his loss. The landlord claims the cost for repairing the hutch which he claims was damaged by the tenants to an amount of \$275.00. The landlord also claims the cost of replacing the balcony carpet due to cigarette burns to an

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amount of \$863.25. The landlord claims the tenants removed some of the window coverings over the patio door and damaged some of the venetian blinds. They were given the opportunity to return the missing drapes but failed to do so. As a result the landlord obtained three quotes to replace the drapes and blinds and has picked the lowest quote of \$922.42. The landlord also claims the tenants caused damage to the sliding door on the balcony. He contracted a repair man at a cost of \$200.00.

The landlord claims the tenants did not pay the water bill for August, 2009 as agreed at the start of the tenancy to an amount of \$27.68 plus \$6.38 taxes.

The tenants dispute some of the landlords claim. They agree that they did cause some damage to a downstairs door, a broken light fixture, the cooker hood, a broken window, bedroom light shade, three light bulbs, damage to the draw strings on the balcony blinds, and they agree they did leave some garbage at the house when they moved out. The tenants dispute the remainder of the landlords claim. They claim the toilet seat was not broken by them and they have no knowledge of how the damage to the hutch occurred. They claim they replaced the balcony door drapes because the old one was nicotine stained and the female tenant has health issues. She also agrees that they did not return them when they moved out. The tenants claim they have no idea how cigarette burns happened on the balcony carpet and argue that the previous owners also smoked. The tenants claim the window screen did not have the correct fixtures and may have blown off in the winds and become damaged. They have no knowledge of the kitchen cupboard door handles. The tenants claim that there were no scratches on the doors and they have no knowledge how these scratches occurred. They claim the patio door was damaged when they moved into the house and the front door was not damaged by them.

The tenants also claim they did clean the house when they moved out and had the carpets cleaned (no receipts provided). The tenants state that they asked the landlord to do a walkthrough of the property at the end of the tenancy but this did not take place as the landlord told them he wanted to obtain some quotes for the work.

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The landlord has provided documentary evidence with photographs, receipts, estimates and bills.

The landlords witness testifies that he is very familiar with the house and site as he was a frequent visitor when the landlords' parents occupied the house. When the tenants moved out he went over to the property with his daughter as she wished to view the house with a mind to rent. They discovered muddy foot and hand prints on the front door. There was evidence of food on the ceiling and garbage left in the house. The door to the family room was badly damaged and the venetian blinds looked as if they had been cut. The windows were very dirty; the screens were left lying on the ground and were bent and damaged. The patio doors were very hard to open. The witness also testifies that he was able to observe the tenants children smoking on the balcony and that the tenants never cut their grass. He claims that although the previous owners did smoke they smoked on the front step and not to his knowledge on the balcony. He also testifies that he observed the tenants children climbing up the wall and kicking one of the screens out. The witness also claims that he was familiar with the hutch and it was in good condition when he visited the house with the previous owners.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. With regard to the tenants claim for the return of double their security deposit I find the burden of prove falls on the tenants to provide evidence that they did give the landlord their forwarding address in writing. In this instance the tenants have failed to satisfy this burden of prove and therefore their application for the return of double their security deposit is dismissed without leave to reapply.

With regard to the landlords claim for damages. In this instance the burden of proof is on the landlord 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 landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the landlord did everything possible to address the situation and to mitigate the damage or losses that were incurred.

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Based on the testimony, evidence and balance of probabilities, I find the landlord has produced evidence that does satisfy his burden of proof that the tenants caused damage and did not clean the rental unit at the end of the tenancy. The tenants claim that they cleaned the rental unit and carpets at the end of the tenancy but have not provided any receipts to support this claim. They also argue that they do not have any knowledge of some of the damages that occurred, however it is evident that these damages occurred during their tenancy. Therefore, I uphold the landlords claim for damage to the rental unit. I further find the landlord has attempted to mitigate his loss by using materials he had in his possession for some of the repairs and has not passed on any additional charges to the tenants for additional materials. I find the landlords' evidence and the evidence of his witness more credible as to the damage that occurred. Consequently I find the landlord is entitled to recover the amount of **\$1,710.00** for his labour costs. In addition to this I further find the landlord is entitled to recover his additional costs associated with these repairs; materials **\$153.91**; repairs to the hutch **\$275.00**; replacement of balcony carpet **\$863.25**; replacement drapes and blinds **\$922.42**; repair to patio door **\$200.00**.

Sections 23, 35(3) and 35(5) of the Act require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the tenants moved in and moved out, I find the landlord contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) of the Act says that the Landlord's right to claim against the security deposit for damages is extinguished. I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlord to keep **\$755.03** from the Tenants' security deposit (\$750.00) and accrued interest (\$5.03) to compensate him for the damages.

I also find the landlord is entitled to recover the amount of \$27.68 plus taxes of \$6.38 for the outstanding water bill for August 2009 owed to him by the tenants to a total amount of **\$34.06**.

A Monetary Order has been issued to the landlord for the following amount:



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Labour costs	\$1,710.00
Repairs to hutch	\$275.00
Replacement costs for balcony carpet	\$863.25
Replacement of blinds and drapes	\$922.42
Repair to patio door	\$200.00
Water bill and taxes	\$34.06
Filing fee	\$50.00
Subtotal	\$4,208.64
Less security deposit and accrued interest	(-755.03)
Total amount due to the landlord	\$3,453.61

Conclusion

The tenant's application for the return of double the security deposit is dismissed without leave to reapply.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,453.61**. The order must be served on the tenants and is enforceable through the Provincial Court 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: January 22, 2010.

Dispute Resolution Officer