



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlord – MND, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant seeks the return of double the remainder of her security deposit and to recover her filing fee. The landlords seek a Monetary Order for damage to the rental unit, for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The landlords also seek to recover their filing fee.

The tenant served the landlords by registered mail on May 27, 2010 with a copy of the application and a Notice of the Hearing. The landlords served the tenant by registered mail on June 30, 2010 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 along with a witness for the tenant. All Parties 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

- Is the tenant entitled to recover double her security deposit?
- Are the landlords entitled to a Monetary Order for damage to the rental unit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both Parties agree that this tenancy started on January 01, 2006. A new agreement was entered into on January 01, 2010 for a fixed term tenancy ending on December 31, 2010. The tenant vacated the rental unit on April 30, 2010 after one months notice was given to the landlords on March 20, 2010. Rent for this unit was \$1,000.00 and was due on the first of each month. The tenant paid a security deposit of \$500.00 on January 01, 2009.

The tenants application

The tenant testifies that a move in condition inspection was completed at the start of the tenancy. A move out condition inspection was arranged with the landlords on April 30, 2010 and the landlords attended this inspection with the tenant and her father present. The tenant states the landlords walked around the unit with her. She states the form was completed by her and this indicated the condition of the unit at the end of the tenancy and the landlord did not add or indicate any damages or cleaning to the the report.

The tenant states the female landlord went straight to the curtains when she first came in and said they were dirty. The tenant states she had not used the curtains during her tenancy and they were in that condition at the start of her tenancy, although the curtains are not mentioned on either the move in or move out condition inspection reports. The tenant states she had just had the carpets professionally cleaned that day. The tenant states the landlords went into the kitchen and told her she had not cleaned the microwave or the cupboards. The tenant claims the cupboards had been cleaned twice and the microwave had never been used but had been kept in storage and brought back into the unit that day. The tenant claims the landlords told her the bathtub was scratched. The tenants states the bathtub is very old and has some scratches which would be normal wear and tear during her tenancy. The tenant states the landlord also said the windows were dirty on the outside but she claims as the unit is on the twelfth floor it would not be her responsibility to clean these. She also states the landlord said the patio windows and rug required cleaning. She states the rug was hers and was removed and she offered to clean the windows at that time or return later but the landlords did not respond to this

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offer. The tenant states that the landlords did not indicate any repairs or cleaning required on the move out condition inspection form.

The tenant states her and her father left the unit and realized the landlords had not signed the form so they waited for them in the lobby of the building and he signed the form when he came down and added some additional comments about after necessary repairs and cleaning he will mail her deposit. The tenant states she asked the landlord what this comment meant and what repairs and cleaning were required. She states he told her that would depend upon the new tenants' thoughts about the condition of the unit. The tenant claims she called the new tenant who offered to come over but the landlord could not wait as he had to take his wife to the hospital.

The tenant states that she received a cheque for \$300.00 for part of her security deposit from the landlords on May 14, 2010. The tenant states she called the landlords to find out why they had kept \$200.00 but they did not return her calls.

The tenant has provided photographs showing the condition of the kitchen cupboards at the start of her tenancy which show some of the edging peeling off the cupboards and pictures of unmatched paint on the walls.

The tenant seeks to recover double the remainder of her security deposit and wishes to amend her monetary claim to \$400.00 to include this in accordance with section 38 of the Act.

The landlords state the tenant filled in the move out condition inspection form and agree they did sign it but state there were some damages and cleaning required which they noted on the end of the form although they state they did not itemizes what areas of damage or cleaning.

The landlords application

The landlords seek to recover \$500.00 in damages, for repairs and for new curtains. The landlords state they paid the new tenant \$200.00 towards new curtains for the living room because they had been left stained and dirty by this tenant. They claim she did not clean the

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balcony and the door tracks, concrete and windows were left unclean. The landlords state the tenant damaged the kitchen cupboards and left the edges peeling off. They claim they did not see this damage during the inspection. The landlord's state they wish to keep the remaindering \$200.00 of the security deposit and seek an additional \$300.00 from the tenant towards the damages and cleaning costs.

The tenant disputes the landlord's claims. She states this was normal wear and tear, as the kitchen cupboards were already peeling when she moved in, She claims she did offer to clean the patio but the landlords did not seem interested in this. She claims the curtains were already stained and dirty when she moved in and could not have been new at the start of her tenancy. The tenant questions the validity of the landlord's photographic evidence as one picture shows a dirty carpet when she had had the carpets professional cleaned the day she moved out. The tenant states the landlords sent her an invoice showing they had paid \$800.00 for painting the unit when this would have been his responsibility to do so.

The tenants witness testifies that he helped his daughter move into the unit and the curtains and appliances were not new at the start of his daughters' tenancy and the curtains were dirty at that time.

The landlord seeks \$1,000.00 from the tenant as she broke the tenancy agreement before the end of the fixed term. The landlord states the tenancy agreement has a clause which states " if the tenant wanted to move out before a fixed term length of 12 months, they must notice the landlords at least one month before moving out and must pay one month rent more to landlords". The landlord's state as the tenant moved out after four months they seek to recover an extra month's rent from her in compensation for their trouble.

The tenant states as the unit was re-rented for May 01, 2010 the landlord has not lost any rental income from the unit. The tenant questions this clause in the tenancy agreement as it is not a standard term for a tenancy agreement and is therefore not enforceable.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. With regard to the tenants claim for the return of double the remainder of her security deposit; Section 38 (1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on March 20, 2010 and again on April 30, 2010, As a result, the landlord had until May 15, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord returned \$300.00 of the security deposit within the fifteen allowable days but did not file an application to keep the remaining \$200.00. Therefore, I find that the tenant has established a claim for the return of double the remaining amount of her security deposit to the sum of **\$400.00** plus accrued interest of **\$17.69** on the original amount, pursuant to section 38(6)(b) of the *Act*. I have allowed the tenant to amend her application to recover double her security deposit as the landlord did not return all of it or apply to keep the balance of the deposit.

With regard to the landlords claim for damages to the rental unit: Sections 23 and 35 of the *Act* say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

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The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. The Parties agree that the tenant completed the condition inspection report and the landlord has signed this report without indicating on the appropriate sections of the report that there are areas of damage or cleaning required and what these damages are. Consequently the burden of proof falls on the landlords to provide additional corroborating evidence to support their claim that the tenant was responsible for damage or cleaning to the rental unit that goes over and above normal wear and tear.

I also find that under section 32 of the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore, the landlords might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlords are not entitled to charge the former tenant for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenant failed to meet the "reasonable" standard of cleanliness required.

In this instance I find the landlords have not met the burden of proof with regard to damages or cleaning costs and their application for a Monetary Order for damage is dismissed.

With regard to the landlords claim for \$1,000.00 due to a clause in the tenancy agreement; section 6 (3)(b) of the *Act* states a term of a tenancy agreement is not enforceable if the term is unconscionable. Part 1, section 3 of the Residential Tenancy Regulations gives a definition of "unconscionable" and states: for the purposes of section 6(3)(b) of the *Act* (unenforceable term), a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

In this case I find the landlord did re-rent the unit to a new tenant for May 01, 2010 and did not suffer any loss of rental income because the tenant ended the tenancy before the end of the fixed term. The landlords did not have a term in the tenancy agreement that stated they will charge the tenant a sum for liquidated damages to cover any costs incurred in re-renting the



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unit if the tenant breaches the fixed term of the tenancy and therefore, it is my decision that this term in the tenancy agreement is unconscionable and is therefore not enforceable.

Consequently, this section of the landlords claim is dismissed.

As the tenant has been successful with her application I find she is entitled to recover her \$50.00 filing fee from the landlords pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the tenant for the following amount:

Double the remainder of the security deposit	\$400.00
Filing fee	\$50.00
Total amount due to the tenant	\$467.69

As the landlords have been unsuccessful with their claim I find they must bear the cost of filing their own application.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$467.69**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

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 13, 2010.

Dispute Resolution Officer