



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND MNSD MNDC FF
 MNDC MNSD FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a Monetary Order for damage to the unit, site or property, to keep all or part of the security and or pet deposits, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking a Monetary Order for the return of double their security and pet deposits, for money owed for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents by the Landlords to each Tenant was done in accordance with section 89 of the Act, sent via registered mail September 11, 2010. Canada post receipt numbers were provided in the Landlord's testimony. Each Tenant is deemed to have received the hearing documents on September 16, 2010, five days after they were mailed, in accordance with section 90 of the Act.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenants despite their own application for dispute resolution being scheduled to be heard at the same hearing and despite them being served notice of the Landlords' application in accordance with the Act.

Issue(s) to be Decided

1. Did the Tenants breach the *Residential Tenancy Act*, regulation or tenancy agreement?

2. If so, have the Landlords proven entitlement to a monetary claim as a result of that breach?
3. Have the Landlords breach the *Residential Tenancy Act*, regulation, or tenancy agreement?
4. If so, have the Tenants proven entitlement to a monetary claim as a result of that breach?

Background and Evidence

Landlords' Application

The Landlord testified the parties entered into a written fixed term tenancy agreement effective July 1, 2008 which was set to switch to a month to month tenancy after July 31, 2010. Rent was payable on the first of each month in the amount of \$2,095.00. The Tenants paid a security deposit of \$1,097.50 and a pet deposit of \$250.00 on June 27, 2008. The parties mutually agreed the tenancy would end July 31, 2010. The Landlords' agent conducted the move in inspection report on July 1, 2008 in the presence of the Tenants who signed the document.

The Landlord confirmed they were in and out of the rental property several times near the end of July 2010 as they were conducting repairs while the Tenants were moving out. They did not issued the Tenants two dates and times to attend a move-out inspection walk through nor did they issue the Tenants a final notice to attend an inspection in writing. The Landlord stated they waited for the Tenants to finish cleaning on August 1, 2010 and leave. The Tenants were instructed to leave the keys to the rental property in the mailbox of the unit, which they did. The Landlords attended the unit August 3, 2010 and completed the move out inspection document in the absence of the Tenants.

The Landlord stated he was not certain of the exact dates of when the Tenants finally vacated or when he actually performed the move out inspection. He said they were trying to negotiate an agreed deduction amount from the security deposit and when that fell through they changed the move-out inspection form and made their application for dispute resolution. The Landlord later stated that he did not change the move-out checklist form rather he changed the typed written summary of his claim and while there are several versions of this document, the Tenants were given a copy of the original and they submitted the latest version with their application. He later confirmed that he added

the Tenants' forwarding address to the move-out form after he received the address via e-mail. He states he did not receive the Tenant's forwarding address in writing until he received an email dated August 25, 2010 which was provided in his evidence.

The rental property is a house which was built in 1979 and was purchased by the Landlords in May 2002. The Landlords seek compensation for the following damages:

1. \$200.00 to replace the front door, door handle with locks, and the door frame. He confirmed this is the original door and there was pre-existing damage to the door and door jam at the onset of the tenancy. There was a key broken off in the door lock at the end of the tenancy. The Landlord upgraded the door to include a window when it was replaced. He is not seeking to recover the full cost of the repair. He did not submit a copy of the invoice and believes the repair was conducted on August 4, 2010.
2. \$39.00 to replace a broken bathroom door handle. He stated it was the original handle and was replaced on August 4, 2010. He did not submit a receipt and could not confirm if this amount was rounded up or down.
3. \$32.00 to replace the front door bell which was original from 1979. It was replaced on August 4, 2010 and he did not submit a receipt.
4. \$280.00 to repair the built in vacuum cleaner. This unit was original from 1979 however the hose and power head were new from two years ago. He believes the work was completed August 5, 2010. He did not submit a receipt in support of this claim.
5. \$170.00 to replace nineteen burnt out light bulbs. He stated there were various types of light bulbs which were left burnt out at the end of the tenancy. He purchased them all on what he believes was August 4, 2010. He did not submit a receipt in support of this claim.
6. \$31.00 to replace a broken toilet seat that was only two years old. It was replaced August 4, 2010.
7. \$15.00 to cover the cost of a missing package of fluorescent tubes. He states he left these tubes at the rental unit and the male Tenant took them and used them in his shop. The Landlord did not submit evidence that the tubes were in the unit at the onset of the tenancy nor did he submit evidence to support the cost of the tubes or that they were replaced.
8. \$15.00 to stain a section of the cedar siding that had marks on it from pressure washing. The Landlord did not provide evidence to support this alleged damage

occurred during the tenancy nor did he provide proof that stain was purchased and used on the siding.

9. \$19.00 for the cost of a missing lock and key that was originally on the window bars in the basement. This lock and key were new in 2002 and have not been replaced.
10. \$20.00 for the cost of shelving from the crawl space that was removed. It consisted of press board custom cut to fit into the location. These boards have not been replaced and the age was unknown.
11. \$8.00 for the cost of pressure washer solution used to clean an oil stain on the driveway. They did not submit invoices to support the purchase or cost of the solution.
12. \$29.00 to recover the cost of a bank transaction fee which the Landlords incurred when the Tenants' July 2010 cheque was returned NSF. The Landlords did not submit evidence that they were charged this fee.

In closing the Landlord stated that overall these were great tenants and they are only looking for fairness in making this claim.

Analysis

Tenants' Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenants called into the hearing during this time. Based on the aforementioned I find that the Tenants have failed to present the merits of their application and the application is dismissed, without leave to reapply.

Landlords' Application

Section 35(2) of the Act provides that a landlord must offer the tenant at least 2 opportunities to attend the move-out inspection. If the parties cannot come to an agreement on the date and time then the landlord must issue the tenant a final written

notice with the date and time to attend the move out inspection. In this case the evidence supports that although the Landlords were conducting repairs to the unit at the end of the tenancy they made no effort to schedule a move-out inspection with the Tenants. The Landlords were later informed of their obligation to complete the move-out inspection form so they completed the report in the Tenants' absence.

Section 36(2) of the Act provides the right of the landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord does not complete with Section 35 (2) of the Act.

Based on the aforementioned I hereby find the Landlords failed to comply with Section 35 (2) of the Act and their right to claim for damages against the security deposit are hereby extinguished pursuant to section 36(2) of the Act. That being said, the Landlords are not precluded from claiming for damages under section 37(2) that states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Upon careful review of the Landlord's evidence I put little weight on the move-out inspection report for the following reasons: 1) it was completed in the absence of the Tenants; and 2) it was altered after it was initially completed; and 3) there was no

evidence provided, such as photographs, to support the actual condition of the residence at the end of the tenancy. The Landlords relied on a typed written itemized list of items they created to support their monetary claim for damages.

Haven given little weight to the move-out inspection above and in the absence of copies of receipts to support the date and actual cost of the alleged repairs, I find the Landlords have provided insufficient evidence to prove the test for damage or loss as listed above. Therefore I hereby dismiss the Landlords' claim in its entirety, without leave to reapply.

The Landlords have not been successful with their application; therefore I decline to award recovery of the filing fee.

Having dismissed the Landlords' claim, I find the Landlords are no longer entitled to retain the security deposit in trust. The evidence supports the Landlords received the Tenants' forwarding address via e-mail on August 25, 2010 and they made their application for dispute resolution 14 days later on September 8, 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than September 9, 2010.

Based on the above, I find that the Landlords have not failed to comply with Section 38(1) of the *Act* and that the Landlords are not subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I hereby Order the Landlords to return the Tenants security deposit of \$1,097.50; plus the pet deposit of \$250.00; plus interest from June 27, 2008 to January 11, 2011, of \$10.38; for a total amount of **\$1,357.88**.



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Conclusion

The Tenants' copy of the decision will be accompanied by a monetary order for **\$1,357.88**. This Order must be served on the Landlords and may be filed in Provincial Court and enforced 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 10, 2011.

Residential Tenancy Branch