



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

For the tenants – MNSD, FF

For the landlord – 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 tenants seek to recover double their security deposit and pet deposit and to recover their filing fee. The landlord seeks an Order to keep part of the tenant's security deposit and pet deposit, a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to recover his filing fee.

The tenants served the landlord by registered mail on November 15, 2010 with a copy of the application and a Notice of the Hearing. The landlord served the tenants by registered mail on November 23, 2010. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. The tenant states he did not receive the landlords' evidence package sent by registered mail. The tenant was given the opportunity to adjourn the hearing but choose to continue with the hearing today.

The male tenant and the landlord 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:

Preliminary Issues

RTB Rules of Procedure 2.3 states that "***if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution***

officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find the landlord has applied for a Monetary Order for money owed or compensation for damage or loss. However, the landlord has not specified an amount claimed for and the amount he has claimed is the amount withheld from the tenants’ security deposit for alleged damages to the rental unit. Therefore, I find the claim to keep the security deposit for alleged damages is the same claim as for compensation for damage or loss and as such his claim for money owed or compensation is dismissed without leave to reapply.

Issue(s) to be Decided

- Are the tenants entitled to double their security and pet deposits?
- Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on March 15, 2010. Rent for this unit was \$2,150.00 per month and was due in advance on the 1st day of each month. The tenants paid a security deposit of \$1,075.00 and a pet deposit of \$537.50 both on February 26, 2010. Both parties also agree that no move in or move out condition inspections were completed in accordance with sections 23 and 35 of the *Act*.

The tenant attending testifies that they gave the landlord written notice to end their tenancy on September 29, 2010. Contained within this notice was their forwarding address. The tenant testifies that they had moved from the unit by October 27, 2010 although the tenancy actually ended on October 31, 2010. The tenant testifies that the landlords’ agent walked around the unit with them and was happy with the condition of the unit but asked the tenants to do some additional cleaning. As per the landlords agents request they held onto the keys to the unit so they could access it to do the additional cleaning requested. The tenant testifies the unit was left in a good clean condition and the keys were returned to the landlords’ agent on November 03, 2010.

The tenant testifies that when they gave Notice to End Tenancy they fully believed that the forwarding address they gave to the landlord was going to be their new address. As it was, this

rental unit fell through and the tenant had to move elsewhere. The tenant testifies he gave the landlord his new address in writing on November 09, 2010 and when he realized he had provided an incorrect postal code this was amended on November 12, 2010. The tenant testifies that they did not cause any damage to the rental unit during their tenancy and were not informed of any damage to the unit during their tenancy.

The tenant testifies that the landlord did return \$612.50 of their security deposit on November 25, 2010 and testifies they did not authorise the landlord to keep the balance of \$1,000.00 from their deposits.

The landlord testifies that the unit was brand new at the start of the tenancy and these were the first tenants to move in. The landlord agrees that he failed to do the move in or move out condition inspections and states they only did a walkthrough of the unit with the tenants. The landlord testifies that the tenants caused some damage to the unit and the ceiling of the unit below. The landlord claims the tenant left a stain on the carpet, a large scratch on the hardwood floor, left bathroom and kitchen appliances unclean and caused water to flood into the unit below. The landlord has provided photographs of a scratched on the wood floor, a stained sink, and what appears to be water damage on a wall or ceiling.

The landlord testifies he is only seeking to keep \$482.95 for the repairs which resulted in the water damage. He states when the tenants moved in the male tenant wanted to pressure wash the back deck. The landlord states he told the tenant he could attach the hose to the water outlet in the laundry room where the washing machine was hooked up. He states the tenant pressured washed the deck and water leaked from the laundry room into another tenants unit downstairs. The landlord states he deduced this water damage happened because of the tenant's actions in connecting this hose as there was no leak before he did this and once the ceiling had dried out no further leaks have occurred. The landlord also states that the plumbing in the units was all new and permits had been obtained and inspections carried out.

The landlord testifies that he kept the costs for this repair to a minimum and told the painter not to replace drywall but to just scrape off the damaged paint and repaint. He states the ceiling was not repaired at this time as the tenant downstairs had not been well. The touch up repair work

came to \$232.95 and the painter has provided a receipt for this work and an estimate to repaint the ceiling to its original colour of \$250.00.

The landlord testifies that he had a conversation with the tenant about the leak and he claims the tenant told him when he pressure washed the deck some water had leaked onto the laundry room floor. The landlord states it was the tenants downstairs who informed him of the leak. The landlord testifies he did not follow through with the tenant concerning this as he did not want to inconvenience the downstairs tenant.

The tenant testifies that the first they heard about a leak was when they had moved from the rental unit. The tenant testifies that he did not have any conversations with the landlord during his tenancy concerning a leak. He testifies that the washing machine was installed after they had moved in and the technician had to adjust the spigot as water ran down the walls. The tenant states had the landlord told them that this water leak had occurred during their tenancy they could have resolved the issue at the time. The tenant states after he had cleaned the deck he did not notice any water leak in the laundry room and the downstairs tenant did not inform them he had water coming through his ceiling.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I refer both Parties to sections 23(4), 35(3) of the *Act* which requires 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 tenants even if the tenants refuse to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenants moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit or pet deposit for damages is extinguished.

In accordance with the above sections of the *Act* as the landlord did not return all the tenants security deposit and/or pet deposit within 15 days of the end of the tenancy and as he extinguished his right to keep all or part of the security deposit and pet deposit and his right to

make a claim against it; the tenants application is upheld and they are entitled to recover double their security deposit and pet damage deposit to the sum of \$3,225.00.

As the tenants have been successful with their claim I find they are entitled to recover their \$50.00 filing fee pursuant to s. 72(1) of the *Act*. As the landlord has been unsuccessful with his claim I find he must bear the cost of filing his own application.

As the landlord has returned \$612.50 of the security deposit the tenants will receive a Monetary Order for the remaining amount as follows:

Double security deposit	\$2,150.00
Subtotal	\$3,225.00
Less amount already returned	(-\$612.50)
Plus filing fee	\$50.00
Total amount due to the tenants	\$2,662.50

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 **\$2,662.50**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlords application is dismissed 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: March 18, 2011.

Residential Tenancy Branch