



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes For the Tenants: MNSD, MNDC, FF
For the Landlords: MND MNDC, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Tenants applied for a monetary order for money owed or compensation under the Residential Tenancy Act (the "Act") or tenancy agreement, to recover all or part of the security deposit and to recover the filing fee for the Application.

The Landlords applied for a monetary order for damage to the rental unit, for compensation under the Act and the tenancy agreement, and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Are the Landlords entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

I heard testimony that this tenancy began on December 1, 2008, ended on August 28, 2010, monthly rent was \$1,250.00 and a security deposit of \$600.00 was paid on December 3, 2008.

The Tenants are claiming the amount of \$2,200.00, which includes their security deposit, doubled, and \$1,000.00 representing \$50.00 per month for rent reduction for keeping the premises tidy, from January 2009, until the end of the tenancy.

The Tenants supplied evidence and gave affirmed testimony that the Landlords were provided the Tenants' written, forwarding address on September 28, 2010, with a request for a return of their security deposit. Other relevant evidence submitted by the Tenants included a 1 page tenancy agreement, which among other items, listed the Tenants receiving a rent reduction of \$50.00 per month if the premises are kept tidy, and photos of the rental unit and yard.

In support of their application, the Tenants submitted that in addition to providing the written forwarding address, they called the Landlords several times requesting a return of the security deposit.

The Landlords are claiming the amount of \$2,040.00, which includes \$890.00 for repairs, renovations and clean-up, \$50.00 for yard work, \$650.00 for missed revenue, and \$450.00 for new carpet.

Relevant evidence submitted by the Landlords included a written summary of their claim, a letter from a former tenant, email letter from an adjoining tenant, copies of pictures of the rental unit, a letter and invoice from a contractor, a 1 page tenancy agreement, and a letter date October 4, 2010, to the Tenants explaining why the Landlords were not returning the security deposit.

In support of their application, the Landlords submitted that the Tenants left the rental unit's carpets soiled and in a state which required repairing.

The Landlord testified that the Tenants did not take care of the yard, left it untidy and with weeds growing. The Landlords stated they knew the premises were not taken care of as they frequently walked past the rental unit. The Landlords also submitted that the adjoining tenant had to take care of the premises and snow removal.

Upon query, the Landlord stated that she never spoke to the Tenants about the state of the yard. Further upon query, the Landlord submitted that the agreement for a \$50.00 rent reduction to be applied at the end of the year, and not per month, was discussed

verbally with the Tenants. The Landlords submitted that the Tenants never called to discuss the rent reduction at the end of the year.

When questioned, the Landlords admitted there was no move in or move out condition inspection performed with the Tenants at the start of the tenancy or at the end of the tenancy in conformance with the Act. However, the Landlord contended that the condition of the property was confirmed by the letter from the previous tenant.

In response, the Tenants stated that the carpets were cleaned by them prior to moving out and that even though the male Landlord attended the rental unit prior to the Tenants moving out, nothing was said about the condition of the premises.

Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the Landlord to prove damage or loss.

Tenants' Application:

In this case the evidence and testimony supports that the Tenants provided the Landlords with their written, forwarding address on September 28, 2010, and that the Landlords acknowledged receiving the forwarding address in their letter of response on October 9, 2010.

The Landlords have admitted that they did not apply for dispute resolution to keep the security deposit, do not have an Order allowing them to keep the \$600.00, and they do not have the Tenants' written consent to retain the security deposit.

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 Tenants' security deposit in full or file for dispute resolution no later than October 24, 2010.

Based on the above, I find that the Landlords failed to comply with Section 23 (1) and 38(1) of the *Act* and that the Landlords are now 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. I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of their security deposit plus interest.

As to the Tenants' claim for the amount owing for a rent reduction, the majority of the evidence consisted of disputed verbal testimony. I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof cannot prevail on the balance of probabilities.

I find the Tenants submitted insufficient proof to establish that they kept the premises tidy in order to claim the rent reduction of \$50.00 per month. I therefore dismiss their claim for \$1,000.00.

I find it was necessary for the Tenants to file an application to address the issue of the return of their security deposit and I therefore approve their claim for recovery of the filing fee.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Doubled Security Deposit owed 2 x \$600.00	\$1,200.00
Filing Fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANTS	\$1,250.71

The Tenants are hereby granted a monetary **Order** in the amount of **\$1,250.71**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Landlords' Application:

Section 23 and 35 of the Act *requires* a landlord to provide opportunities for a move in and move out condition inspection and to complete an inspection report in accordance with the Act and regulation.

With the contradicted evidence and without the condition inspection report indicating damage caused by any party, I find the Landlords have not established the condition of the rental unit either before or after this tenancy and therefore I find that the Landlords have **not** proven a monetary claim for the alleged damages to the rental unit, including missed revenue due to clean-up.

I **dismiss** the Landlords' Application without leave to reapply.

Conclusion

The Tenants are granted a monetary Order in the amount of **\$1,250.71**.

The Landlords' Application is dismissed.

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: April 11, 2011.

Residential Tenancy Branch