



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlords – MND, MNSD, 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 to recover her security deposit and filing fee. The landlords seek a Monetary Order for damage to the rental unit. The landlords also seek an Order to keep the tenants security deposit and to recover their filing fee.

I am satisfied that both Parties were served with a copy of the Application and Notice of Hearing pursuant to s. 89 of the Act.

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 make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to the return of double her security deposit?
- Are the landlords entitled to a Monetary Order for damage to the rental unit?
- Are the landlords entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this tenancy started on July 01, 2010. This was a month to month tenancy and the tenant moved from the rental unit on February 28, 2011 after the landlord served her with a Two Month Notice to End Tenancy on December 26, 2010. The tenant paid a monthly rent of \$480.00 and a security deposit of \$240.00 and received her last month's rent free in compensation for the Two Month Notice.

The tenants testifies that she gave the landlord her forwarding address in writing on March 15, 2011 and the landlord agrees she received this letter on March 18, 2011. The tenant states she seeks double her security deposit as the landlord did not return her deposit to her within 15 days of receiving her forwarding address. (Copy of letter provided) The tenant also seeks to recover her \$50.00 filing fee paid for her application.

The landlord testifies that they applied to keep the security deposit on March 29, 2011, within the 15 allowable days of receiving the tenants forwarding address. The landlord and tenant both agree a move in condition inspection was carried out. The tenant states she did not sign the inspection report because she told the landlord there were some things in the unit that required attention.

The landlord testifies that they gave the tenant two opportunities to attend the move out condition inspection but she failed to attend on either occasion. The tenant agrees she did not attend this inspection as her son was unwell at the time.

The landlord testifies that she was not aware she must still fill in the condition inspection report if the tenant was not present so instead she took photographs of the cleaning required and the damage in the unit and has provided these in evidence. The landlord testifies that the tenant caused the following damage: Damage to a kitchen cabinet door which was left hanging off its hinges, an interior door lock had to be changed as the tenant did not return the keys, damage to the kitchen counter with an edge peeling off and a burn mark on top of the counter, Broken ceramic tile in two corners of the kitchen, a quantity of

missing or burnt out light bulbs throughout the unit, damage to the bedroom fan which resulted in having it replaced, damage to a bedroom wall which resulted in repair and painting of the wall, stains and wax left on the fireplace mantel which had to be sanded and painted, a quantity of garbage had to be removed along with an abandoned bed frame, bed and an old washer, cleaning of the unit by the landlord and family members for five hours on February 28 and seven hours on March 01, 2011. The landlord also seeks to recover the cost of having the photographs printed so they can be used in evidence.

The landlord testifies that the unit had been thoroughly cleaned at the start of this tenancy and has provided a letter from both the previous tenant and a cleaner employed at that time who both state the unit was cleaned by them before occupancy by this tenant.

The landlords seek to recover \$100.00 for their labour costs in making temporary repairs and some initial cleaning; \$50.00 for glue and a spatula to repair the tiles and counter top and for the bathroom lock and key (no receipts provided); \$90.00 to hire two men to remove the garbage and tenants abandoned belonging (receipt provided); \$40.00 to replace the burnt out light bulbs (no receipt provided); \$75.00 for five hours cleaning by the landlord on February 28, 2011; \$210.00 for seven hours cleaning by the landlord and her sister in law; \$165.00 to replace the bedroom fan (no estimates or receipts provided); \$150.00 for three hours work for the landlord to repair and paint the bedroom wall; \$50.00 for painting materials to paint this wall (no receipt provided); \$50.00 for the landlords labour costs to sand and paint the mantel; \$25.00 for painting and sanding materials for this work (no receipt provided); \$25.00 for having the evidence photographs printed.

The landlords seek to keep the tenants security deposit of \$240.00. They also seek a Monetary Order for the remainder of their monetary claim to the sum of \$740.00. The landlord also seeks to recover her filing fee of \$50.00.

The tenant disputes the landlords claim for cleaning and damages. The tenant states the damages were all there when she moved into the rental unit. She states the counter top was already lifting; the burn mark is not a burn but a water mark and states the landlord was aware that the kitchen cupboard door had missing screws in the hinges. She states this is

why she did not sign the inspection report. The tenant states it is the landlord's responsibility to replace burnt out light bulbs. She states she should not be held responsible for any damage to the fire place as she did not use it and disputes that it needed a new paint job. The tenant states she is willing to pay for some things but only if the landlord provides her with receipts showing the true cost.

The tenant states that the ceiling fan was at least 30 years old and had a missing string; any other damage caused to it should be classed as normal wear and tear. The tenant testifies that the fridge was not equipped with wheels to pull it out to clean underneath and accepts that some toys got under the fridge. The tenant agrees to pay the cost of replacing the lock and key to the bedroom door as she states she did lose the key, but states she expects the landlord to provide a receipt first. The tenant disputes that the items she left behind at the unit would cost \$90.00 to remove. The tenant states that the bedroom the landlord has claimed she had to repaint was never used by the tenant. She states she only had a mattress in this room and did not cause damage to the walls.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim to recover double her security deposit. S. 36 (1) of the Act states: The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

The tenant agrees she did not attend the inspection arranged at two separate times and did not appoint an agent to act on her behalf when she knew she was unable to attend. Therefore the tenants application to recover double her security deposit is dismissed.

With regard to the landlords application for damage to the rental unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

1. Proof that the damage or loss exists
2. Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant 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 respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

It is my decision that the landlord has met part 1 and 2 of her claim for damages. The tenant argues that she did not sign the move in condition inspection report because she did not agree to the condition of the unit at the start of her tenancy. However, the tenant also failed to check the box on that report that gives her the opportunity to disagree that the report fairly represents the condition of the rental unit and did not give reasons why. Therefore, I have no evidence before me to show that there were any problems with the rental unit at the start of the tenancy and will be guided by the information on the inspection report which shows the unit was in a good condition when the tenancy began.

The landlords seek to recover costs for their work and materials to rectify some of the damages. However, the landlords have failed to meet part 3 of the above test and have not provided verification of the actual costs required to compensate them for the claimed loss or to rectify the damage. Therefore, it is my decision that the landlords are entitled to recover

their labour costs of **\$100.00** to make the temporary repairs, **\$90.00** to remove garbage and abandoned belongings, **\$285.00** for cleaning, **\$150.00** for repairs and painting of the wall and **\$50.00** to sand and paint the fireplace mantel. The reminder of the landlords claim for materials is dismissed. I also find the landlords claim for photo processing is a cost of doing business as a landlord and this is also dismissed.

With regard to the landlords claim to keep the tenants security deposit; s. 38 (4)(b) of the *Act* allows me to make an order for the landlord to retain all or part of the security deposit. As the landlord is entitled to damages from the tenant I HEREBY ORDER the landlord to keep the tenants security deposit of \$240.00 to offset against damages to the rental unit.

As the landlords have been partially successful with their claim I find they are entitled to recover their **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Labour costs for cleaning and damages	\$675.00
Less security deposit	(-\$240.00)
Subtotal	\$435.00
Plus filing fee	\$50.00
Total amount due to the landlords	\$485.00

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$485.00**. The order must be served on the respondent 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: July 07, 2011.

Residential Tenancy Branch