



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNSD, MNDC, FF
Tenants: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and all three tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; to monies owed or compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenants submitted a copy of a residential tenancy agreement signed by the parties on August 18, 2010 for a month to month tenancy beginning on September 1, 2010 for the monthly rent of \$1,195.00 due on the 1st of each month and a security deposit of \$597.50 and a pet damage deposit of \$597.50 were paid.

The tenants vacated the rental unit on or before April 24, 2011 and a move out Condition Inspection Report was completed that date with two of the tenants. The landlord submits that her daughter accompanied her through the move out inspection and has provided a copy of a written statement attributed to her daughter confirming this.

The tenants dispute that the landlord's daughter attended the move out inspection. They state that the daughter may have been in her rental unit, which was the rental unit below the dispute address, at the time but that she was not with the landlord during the move out inspection they completed.

The tenants also contend that the landlord altered the move out Condition Inspection Report to include items not identified during the move out inspection such as staining of the countertops and the tenants' agreement to withhold any monies from the security deposit or pet damage deposit except for any outstanding utility bills; approximately \$100.00 for carpet cleaning; and unspecified amounts for repair (not replacement) of the countertop.

The Condition Inspection Report submitted shows a one of the tenant's signature in the section that states "I agree to the following deductions from my security and/or pet damage deposit: Security Deposit: 597.50; Pet Damage Deposit will be returned 597.50 less utilities owing."

The landlord also seeks compensation for the equivalent of ½ month's rent as the tenants failed to provide her with a written notice to end tenancy prior to April 9, 2011 with an effective date of April 30, 2011 and that as a result, the landlord testified, she lost a potential tenant who would have taken the rental unit for the start of May 2011 and she was only able to rent to someone for May 15, 2011.

The tenants assert the landlord knew from the start of the tenancy that they would be leaving by the end of April 2011 as they were all students attending a program that would end by the end of April. The tenants also provided email correspondence between the parties from January 2011 through to March and April 2011 confirming their intention to move out at the end of April and to develop an agreeable schedule of showings for new tenants.

The parties agree that the first showing the landlord arranged was for March 17, 2011. The landlord testified she wrote the tenants an email (submitted) on April 4, 2011 requesting the tenants provide their written notice to confirm them vacating the rental unit and that the tenants did not respond until April 9, 2011.

The landlord seeks the following compensation:

Description	Amount
Countertop Replacement	\$1,373.12
Carpet cleaning	\$90.00
Stovetop cleaning	\$15.00
Replacement of a light bulb	\$5.00
½ Month's Rent	\$597.50
Utilities	\$153.25
Total	\$2233.87

The tenants testified that they received \$197.50 from the landlord sometime after May 7, 2011 described in an accompanying letter by the landlord that she will return the full

pet damage deposit of \$597.50 however she retained \$400.00 to cover potential utility bills and would return the balance sometime in the next month.

The tenants also testified they received an additional \$246.75 sometime after May 31, 2011 with an accompanying letter providing a breakdown from the landlord of the utility charges that she was keeping from the balance of the pet damage deposit. The landlord also outlined, in this letter, her breakdown for carpet cleaning; stove top cleaning; and light bulb replacement totalling \$110.00, leaving a balance of \$487.50 towards the cost of replacing the countertop.

The landlord did provide copies of utility bills or receipts for carpet cleaning; stove top cleaning; or light bulbs to the tenants or to this hearing. The landlord did submit two estimates for countertop replacements one in the amount of \$3,183.04 and one for \$1,373.12.

Analysis

Section 38(1) of the Act states a landlord must, within 15 days of the end of the tenancy and receipt of the tenants' forwarding address, return the security deposit and pet damage deposit less any mutually agreed upon amounts that the tenant has consented to in writing or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenants double the amount of the security deposit.

I find that the terms outlined in the signature block of the move out Condition Inspection Report that state the landlord will withhold the pet damage deposit and deduct the amount of utilities when the bills came in did not preclude the landlord from the requirement to return the deposit within 15 days. As a result, I find the landlord failed to comply with Section 38(1) in relation to the pet damage deposit.

I accept the tenant's position that it was unclear as to the amount the landlord would withhold for damages and the amount indicated at the time of the move out inspection did not include replacement of the countertops as a possibility.

As such, even if I were to accept that the Condition Inspection Report was not altered, I find the expectation of the amount owed to the landlord from the tenants for damages was so vague that the tenants could not make an informed decision on signing an agreement to withhold any amounts from the security deposit.

I find the tenants had a reasonable expectation that a portion of the security deposit would be returned and within 15 days. Once the landlord determined that the value of the repair exceeded the amount of the anticipated loss that was suggested at the move out inspection she should have filed an Application for Dispute Resolution to claim

against the remainder of the security deposit. I find that failure to do so has rendered the landlord non-compliant with Section 38(1) in relation to the security deposit.

As to the landlord's claim for rent due to short notice to end the tenancy, I accept the tenants' position that the landlord was not only aware of the tenants' intention to vacate the rental unit no later than April 30, 2011 but that she also acted upon that knowledge and had no reason to determine otherwise. I accept that through the continuous email conversations from January to March that the tenants' provided adequate notice to end the tenancy with well over a 1 month notice.

In addition, I find the landlord has failed, in the absence of any receipts or bills to provide any evidence to establish the value of utilities; carpet cleaning; stove top cleaning and light bulb replacement and she can therefore not claim these amounts from the security deposit.

I do accept the countertops were damaged as described by the landlord and find that she has established the value of the replacement required and that it is required of the entire countertop.

Conclusion

For the reasons noted above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,016.88** comprised of \$2390.00 return of double the amount of the security and pet damage deposit less \$1,373.12 replacement countertops.

This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties were at least partially successful, I dismiss both of their applications to recover the filing fees from the other party.

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: August 24, 2011.

Residential Tenancy Branch