



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on May 18, 2011 for:

1. A Monetary Order for damage to the unit - Section 67
2. An Order to keep all or part of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on June 13, 2011 for:

1. An Order for return of the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to return of the security deposit?

Background and Evidence

The tenancy began on March 1, 2009 and ended on November 30, 2011. Rent in the amount of \$1,135.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$550.00. Although walk-through inspections were done at move-in and move-out, the Landlord states that although the Landlord recalls filling out a form no

copy of any form is available. The Tenants dispute that a move-out report from was completed during the walk throughs.

The Landlord states that the Tenants left the unit unclean and with damages that the Landlords repaired and the Landlords claim compensation for cleaning and repair costs but not labour to make those repairs. The Tenants state that their move-out was completed on November 28, 2010, with cleaning completed on that date and expected to return before the end of the tenancy to finish making repairs to the unit however the Landlords attended the unit and made repairs before the end of the tenancy. As a result, the Tenants state that the Landlords did not provide the Tenants with any opportunity to make any necessary repairs themselves. The Landlords state that they were concerned that the Tenants would not leave the unit clean and repaired in time for the new tenants and that the Tenants gave them permission to complete the work in the unit before the end of the tenancy. The Tenants state that as there were pre-existing damages in the unit from before their tenancy, they only gave permission to the Landlord to make those repairs and not others. Further, the Tenants state that the Landlords gave permission to the new tenants to move some of their belongings into the unit on November 29, 2011 requiring the Tenants to carry out further cleaning to the unit caused by the new tenants. The Landlord states that the Tenants agreed to the new tenants storing their belongings in the unit. The Tenants deny this permission.

The Tenants further state that while professional cleaners attended to the cleaning of the unit on November 28, as the Landlords were not satisfied with the job, one of the Tenant's parents cleaned further including the fridge, oven and bathroom. The Tenants also state that some of the repairs claimed by the Landlord were actually repaired by the Tenants.

The Tenants state that the Landlords did not file their application to claim against the security deposit within the timeframe provided by the Act and that the Tenants are therefore entitled to return of double the deposit. The Landlord states that they are not aware of missing any time limitations on their claim. It is noted that the Landlords made

a previous application on December 12, 2010 to claim against the security deposit however this application was dismissed with leave to reapply for lack of service.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. While the Landlords did make their first application within the time frame required this application was dismissed for lack of service. While the dismissal of this application included leave to reapply, this leave does not extend any applicable time limitation period. While the Landlords were given liberty to reapply for damages to the unit, the time limit to claim against the security deposit has not been met by the present application. Accordingly, I find that the Tenants are entitled to return of double the security deposit plus interest on the original security deposit in the amount of **\$1,100.00**.

In a claim for damage or loss under the Act, the party claiming costs for the damage or loss must prove on a balance of probabilities that the damage or loss exists and that the damage or loss claimed was caused by the actions or neglect of the responding party. Given the undisputed evidence that some pre-existing damages existed, that the Landlords intervened by repairing damages prior to the end of the tenancy, and that no move-in or move-out condition reports exist, I cannot find on a balance of probabilities that the majority of the claims of the Landlord are distinguishable as being caused by the Tenants, repaired by either the Landlord or the Tenants or as existing at the end of the tenancy. Given the Tenants' agreement that the floor under the fridge was not cleaned and that the door purchased and installed by the Tenants had different hinges than the original door that had been damaged by the Tenants, I find that the Landlord has substantiated a nominal claim for these items and I award the Landlords the amount of **\$150.00** for these damages.

As both the Tenant and Landlord have been successful with their claims, I decline to make an award in relation to the recovery of the filing fee. The Tenant has been awarded \$1,100.00. The Landlord has been awarded \$150.00. Setting the awards off against each other leaves a balance of \$950.00 payable by the Landlord to the Tenant and I grant the Tenant a monetary order under section 67 for that sum.

Conclusion

I **Grant** the Tenant an Order under Section 67 of the Act for the amount of **\$950.00**. If necessary, this Order may be filed in the Small Claims 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: August 31, 2011.

Residential Tenancy Branch