



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

DISPUTE CODES MNSD, FF

INTRODUCTION

This hearing dealt with an applications filed by both the tenants and the landlords.

In their application filed June 16, 2011 the tenants seek:

1. Monetary order for return of pet damage or security deposit; and
2. Recovery of the filing fee paid for this application

In their application filed August 9, 2011 the landlord seeks:

1. A monetary Order for damage to the rental unit;
2. An Order to be allowed to retain the security deposit; and
3. Recovery of the filing fee paid for this application.

Both parties attended the hearing and gave evidence under oath.

BACKGROUND AND EVIDENCE

The tenants testified that this tenancy began in June 2007 at which time the tenants paid a security deposit of \$700.00 and the tenancy ended on May 31, 2011. The tenants testified that they provided his forwarding address to the landlord on May 31, 2011 but, to date their deposit has not been returned.

The landlord acknowledges receiving the address provided by the tenants but says they tried to get in touch with the tenants at that address and was unable to do so and he did not return the deposit.

The landlord also submits invoices and the following accounting of damages he says were caused by the tenants as follows:

Citrus O Carpet Cleaning	329.00
Luke Rogers – Drywall repair and paint	450.00
Reliable Parts for the refrigerator crisper	193.18
Malcolm Goodman – Cupboard Door Repair	50.00
Canada Post to rekey postal box lock	25.00
Home Depot – Screen Door	61.58
Windsor Plywood – Bi-fold door	67.19
Total	1175.95

The tenants testified that they rented a steam cleaner and cleaned the carpets themselves but the landlord was not satisfied with the job and insisted on cleaning the carpets in the entire house. The tenants say the carpets were fine except for a few stains.

The male tenant admitted that he put a hole in the wall near the stairs but says the cost for drywall repair and paint is too high. The tenant says that he completed other drywall repairs himself and should not be charged for these repairs.

While the tenants agree they broke the refrigerator crisper, they say this price is too high for a new crisper and that one could have been purchased at Sears for \$130.00.

The tenant says the cupboard door did break during the tenancy but she is not sure why it broke and why it cost \$50.00 to repair.

The tenants say they returned the postal key to the landlord.

The tenants say the screen door was broken when they moved in as was the bi-fold door.

FINDINGS

First, with respect to the Tenants' claim Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause. While the landlord argued that he was unable to get in touch with the tenants at the address provided, this does not matter, once tenants supply an address it is to be considered by the landlord as a forwarding address, even if the tenants do not reside there.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary order in amounting to double the deposit with interest calculated on the original amount only.

Total monetary award payable by the landlord to the tenant:

Security Deposit paid on June 1, 2007	\$700.00
Double Security Deposit	700.00
Interest on original amount paid from date security deposit paid to date of this order	16.75
Total	\$1416.75

With respect to the landlord's claims the landlord bears the burden of proving his claims. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Therefore, based on the testimony and documentary evidence of both parties I find that the tenants responsible for the following sums:

Luke Rogers – Drywall repair and paint	200.00
Reliable Parts for the refrigerator crisper	193.18
Malcolm Goodman – Cupboard Door Repair	50.00
Total	443.18

As I have awarded the tenants the sum of \$1,416.75, I will allow the landlord to deduct \$443.18 from that sum and return to the tenants the sum of \$937.57. I will award recovery of filing fees to neither party.

The tenants are provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: September 21, 2011.

Residential Tenancy Branch