



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order. As a result of time limitations, the original hearing was adjourned twice to be reconvened on future dates. Both parties were provided with notices of the reconvened hearings directly from the Residential Tenancy Branch for both reconvened hearings.

The hearings were conducted via teleconference. The hearing of July 19, 2011 was attended by both tenants, the female landlord, her legal counsel, two agents and witnesses for the landlord, and an observer (landlord). The hearing of August 18, 2011 was attended by the female tenant, the female landlord, her legal counsel, three agents and witnesses for the landlord. The hearing of September 22, 2011 was attended by the female tenant and the landlord's legal counsel.

At the outset of the hearing all parties reviewed the application and I noted that not all the respondents named on the Application were landlords but rather included agents for the landlord. With agreement from both parties I amended the tenants' Application to exclude the landlords' agents as respondents.

Additionally, both the male and female landlords' names were incorrect in the Application and with agreement of both parties I amended the tenants' Application to reflect the correct spelling of both landlords' names.

In the Application, the tenants had not checked off the box to identify that they sought return of all or part of the security deposit. However, the tenants had identified that they sought the return of the security deposit in the "Details of the Dispute" and with the tenants' consent, I amended the Application to include requesting the return of the security deposit.

Prior to ending the originally scheduled hearing, I advised both parties that I would not be accepting any new evidence between the two hearings and should either party submit any new evidence, I would not be considering the new evidence, in accordance with Residential Tenancy Branch Rule of Procedure #11.4.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit; for compensation for repairs, yard work, and cleaning completed during the tenancy and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 23, 24, 25, 32, 33, 35, 36, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants submitted into evidence 4 of 6 pages of a tenancy agreement signed by the parties on May 18, 2010 for a 12.5 month fixed term tenancy beginning on July 10, 2010 for a monthly rent of \$4,500.00 due on the 1st of each month. The tenancy agreement has a handwritten addendum added on the back of the last page that states:

1. "All carpet will be removed and floors will be acceptable to tenant sim to flrs exposed in upstairs bedroom.
2. Walls to be repainted as discussed with Richard.
 - a. Dining rm
 - b. Upstairs hallway
 - c. Blue bathroom
 - d. 1 bdrm
 - e. Areas as needed
3. Plants to be removed in kitchen
4. Owner to clean up yard and cut grass before occupancy
5. Tenant will maintain garden after occupancy."

The tenants sought the following compensation:

Description	Amount
Return of double the security deposit	\$4,500.00
Window Screens	\$319.20
Chimney Cleaning	\$167.44
Contractor – August 3, 2010 – 23.5 hours @ \$50.00 per hour	\$1,396.34
Contractor – August 3, 2010 – 15.5 hours @ \$50.00 per hour	\$996.34
Cleaning – by professional cleaners – 20 hours at \$25.00 per hour plus HST.	\$560.00
Installation of new garage door opener	\$498.40
Cleaning – by tenants – 80 hours at \$15.00 per hour	\$1,200.00
Total	\$9,637.72

The tenants assert that while the above noted items had been written as an addendum to the tenancy agreement, the landlord's agent had agreed verbally to other items.

The tenants testified that when they obtained possession of the rental unit the carpets had been removed but there were staples and nails throughout the home where the carpet had been removed and that nothing had been cleaned. The tenants also stated the walls that were suppose to have been painted were not; that plants had not been removed from the kitchen and that the landlord had not cleaned up the yard and cut the grass before occupancy.

The tenants submitted into evidence two documents entitled Condition Inspection Report both completed by the tenant. One document dated July 11, 2010 documents several deficiencies in the rental unit as noted by the tenant, including the entire house needing cleaning. This document is not signed by either party.

The second Condition Inspection Report is dated March 15, 2011 states that the house is in better condition than at the start of the tenancy and seeks the landlord to pay the tenants \$3,899.00 (as per an attached "Statement of Rental Account") and includes the tenants forwarding address. This document is signed by the female tenant only and not the landlord. The landlord's legal counsel confirmed the landlord did not complete a move in or move out condition inspection report.

While the tenant did not provide a copy of a "Statement of Rental Account" the landlord submitted a copy of a handwritten document from the tenant that outlines the account as follows:

Damage Deposit	\$2,200.00	
Rent (pro-rated)		\$2,758.04
Mar 1 – 19		
\$145.16/day		
Repairs, maintenance,	\$3,877.72	
Supplies, cleaning		
	<u>\$6,077.72</u>	<u>\$2,758.04</u>
	\$6077.72	
	<u>2,758.04</u>	
Total amount	\$3,319.68	
owing		

In the first hearing the landlord asserted this document confirms the tenants agreed that they owed the landlord prorated rent for the period in March 2011 that the tenant had occupancy of the rental unit and that it implies the tenant gave the landlord permission to retain the security deposit in partial satisfaction of the rent owed to the landlord.

In the third hearing the landlord's legal counsel stated the tenants did not provide written permission for the landlord to retain any monies from the security deposit and submits that the requirement to pay the tenant double the security deposit in Section 38(6) is not intended to penalize the landlord when the tenant has failed to pay rent. He further submits that Section 38(4)(b) allows the director, after the end of the tenancy, to order that the landlord may retain an amount from the security deposit.

Counsel also, in the third hearing, asserted that in fact the tenant was not entitled to double the amount of the security deposit because at the time the tenants filed their Application for Dispute Resolution the tenancy had not ended.

Despite these tenants no longer occupying the rental unit, Counsel asserts the tenants are still responsible for the full tenancy because the current occupant is a tenant to these tenants who have sublet the rental unit to the current occupant.

Counsel first asserted that the tenancy ended at the end of the fixed term (July 31, 2011) and later asserted that as the occupant who moved in after these tenants is still residing there the tenancy, in fact, still exists, only for the purposes of the matter before me.

The tenants had submitted a copy of a tenancy agreement signed by the current occupant naming the male landlord in this dispute as the landlord with a notation in the upper right hand corner "sublet". The tenancy agreement is not signed by the landlord and legal counsel confirmed the landlord has not signed a tenancy agreement with the current occupant.

The tenants submitted copies of cheques written by the current occupant made out to the landlord: one cheque is dated February 27, 2011 and noted as "damage deposit" in the amount of \$2,250.00 and one cheque dated March 20, 2011 noted "Mar 20-31 and Apr Rent in the amount of \$6,100.00.

Counsel confirmed the landlord has cashed the February 27, 2011 cheque and offered that the landlord did so because there was no security deposit left as the landlord converted the original security deposit to the rent that was owed to the landlord.

The tenants also submitted 86 undated photographs of the rental unit documenting the condition of the rental unit at the start of the tenancy and 26 undated photographs at the end of the tenancy. The tenants testified that they tried contacting the landlords' agents on several occasions but that they received limited or no response. The tenants stated that they tried calling; text messaging and emails but did not submit any corroborating documentation into evidence.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept that on January 31, 2011 the tenants gave the landlord notice of their intention to end the tenancy on March 31, 2011. I also accept the tenants secured a new occupant for the rental unit.

I note that the tenancy agreement naming the landlord as the landlord for the new occupant is signed only by the new occupant and not the landlord or either of these tenants. As such, I find there is no written tenancy agreement between the occupant and either party.

I accept the landlords accepted a security deposit cheque, dated February 27, 2011 and payable to the landlord, from the new occupant before the landlords knew the tenant had put a stop payment on the March 2011 rent cheque. I find, the landlords cannot now claim that they accepted the deposit from the new occupant to replace the security deposit the landlord kept for rent owed when rent for March was not even due yet.

Further, Section 44(1)(d) states that a tenancy ends if the tenant vacates or abandons the rental unit. While normally a tenant may not end a fixed term tenancy until the end of the fixed term, I find that, in combination of the landlord accepting the security deposit directly from the new occupant and the fact the landlord was aware of the tenants' intentions to vacate the rental unit, that this tenancy ended on March 15, 2011 and the landlord entered into a new unwritten tenancy agreement with the current occupant.

I also accept the tenants provided the landlord with their forwarding address on or before the end of the tenancy. I therefore find the latest the landlord should have returned the tenants' security deposit or filed an Application for Dispute Resolution was April 30, 2011.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As per the tenant's testimony, I accept the tenants did not pay rent for the period of March 1, 2011 to March 15, 2011. I accept the landlord's position that Section 38(6) is not intended to penalize a landlord for a tenant's non-compliance with the *Act*, regulation or tenancy agreement, including the non-payment of rent.

I accept the landlord's position that Section 38 does not allow the landlord to hold a tenant's security deposit beyond the 15 days outlined in Section 38(1) for non-payment of rent, unless the tenant agrees in writing or the director orders that the landlord may retain the amount.

I note however, that unless the landlord obtains an order to retain any amount the landlord must comply with Section 38(1) or pay the tenant double the amount of the

security deposit. As the landlord has not filed an Application to retain any amount from the security deposit I make no findings regarding an order for the landlord to retain any amounts from the security deposit.

Even if I were able to make an order allowing the landlord to retain any amount from the security deposit it does not impact the entitlement of the tenants for the landlord's failure to comply with Section 38(1). As such, and for the reasons noted above, I find the landlord failed to comply with Section 38(1) and the tenants are entitled to double the security deposit.

While I accept the tenants have suffered a loss as a result of paying for window screens; chimney cleaning; and installation of a new garage door opener, removal of tape residue; broken light fixtures; repairing a broken faucet; installing inside alarms; filling holes in cabinets and walls; repairing tiles and grouting; door handles; a leak under the sink; loss spindles and installation of blinds, I find the tenants have failed to establish the landlord breached the *Act*, regulation or tenancy agreement as the tenants have provided no documentation, such as copies text messages or emails, of requests made to the landlord for these items. I dismiss this portion of the tenants' Application.

I accept the written tenancy agreement signed by the parties on May 18, 2010 included an addendum specifically outlining the floors must be acceptable to the tenant; certain walls must be repainted; plants were to be removed from the kitchen; and the landlord was to clean up yard and cut grass before occupancy.

I note, however, there was no specific detail provided as to what constituted having the yard cleaned up or on what date the grass was to be cut. As such, I find these terms to be too vague to be enforceable. Further, from the photographic evidence, I find the yard appears to have been provided in a reasonable manner. I find the tenants have failed to establish the landlord breached the *Act*, regulation or tenancy agreement and I dismiss this portion of the tenant's Application.

I accept the landlord has provided receipts indicating that the landlord paid for having the specific rooms painted that were included in the addendum. I find the black and white photographic evidence submitted by the tenants does not clearly show whether painting was completed or that the evidence identifies any room specifically. As such, I find the tenants have failed to establish the landlord failed to comply with the terms of addendum and I dismiss this portion of the tenants' Application.

I also accept, based on the photographic evidence and despite the landlord's receipt for completion of "carpet removal and clean up", that the flooring where the carpet was removed required additional work by way of the removal of staples from the floor. However, as the tenants have provided receipts for this work in combination with all of the additional work completed by their contractor, the tenants have failed to establish the value of the loss specific to the removal of staples from the flooring. I dismiss this portion of the tenants' Application.

While I acknowledge the female tenant testified that she always hires cleaners whenever she is starting a tenancy, I accept, from the photographic evidence, that the rental unit **required** cleaning at the start of this tenancy.

In total the tenants claim \$1,760.00 (\$560.00 from a professional cleaner and \$1,200.00 from the female tenant herself), however I find the tenants have failed to establish the length of time and therefore the value of the work completed by the tenants themselves. As such, I accept the tenants have established a value of \$560.00 for cleaning.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$5,160.00** comprised of \$4,500.00 double the security deposit; \$560.00 for cleaning and the \$100.00 fee paid by the tenants for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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 26, 2011.

Residential Tenancy Branch