



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNSD, MNDC, FF
Tenant: MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties sought monetary orders.

The hearing was conducted via teleconference and was attended by the male landlord and the female tenant.

At the start of the hearing the landlord requested an adjournment because he had recently had a death in the family and had been unable to serve his evidence due to family commitments over the last three weeks. The landlord testified that he had all the evidence available in July when he filed his Application but that he was unaware, until he received his notice of hearing documents that he had to serve evidence.

As the landlord would have received the notice of hearing documents on the day he submitted his Application or shortly thereafter, I find the landlord had nearly 2 ½ months to serve evidence and that the tenants should not have to wait for the hearing because the landlord chose to not serve it until just before the hearing and then was prevented from doing so. I dismiss the landlord's request for an adjournment.

While the tenant had only checked off that she was seeking return of the security deposit I accept that the details of dispute clearly outlined the tenant also sought compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. I amend the tenant's to include this claim.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order 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, 67, and 72 of the *Act*.

In addition, it must be decided if the tenant is entitled to a monetary order double the amount of the security deposit; compensation for vacating the rental unit early 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 tenancy began on September 9, 2010 as a month to month tenancy for the monthly rent of \$2,800.00 due on the 15th of each month with a security deposit of \$1,400.00 paid in August 2010. The tenancy ended when the tenants vacated the rental unit on or before June 8, 2011.

The tenancy began with a different landlord and during the tenancy the property was sold to this landlord. The previous landlord remained as a tenant in another part of the residential property and sometimes acted on behalf of the landlord (agent) and sometimes did not. The current landlord stated he was not provided with a move in Condition Inspection Report and did not conduct a move out condition inspection or complete a Condition Inspection Report.

The tenant testified that the tenants had provided notice to end the tenancy effective June 15, 2011 and that the landlord, through the upstairs tenant/agent that the new tenants wanted to move in early and as a result these tenants moved out prior to the end date they had provided to the landlord.

While the tenant testified that she thought she had provided the landlord with her forwarding address in her notice to end tenancy she did not submit a copy of the notice and agrees that other than that the earliest she provided the landlord with her forwarding address was on July 6, 2011. The landlord submitted his Application for Dispute Resolution on July 19, 2011.

The landlord makes the following financial claim against the tenants:

Description	Amount
Clean Up	\$300.00
Shampoo carpet	\$200.00
Plumbing	\$200.00
Carpet replacement	\$400.00
Total	\$1,100.00

The tenant agrees that she had been prepared to pay \$350.00 for cleaning services in recognition of her responsibilities at the end of the tenancy. The landlord seeks additional amounts for carpet cleaning; carpet replacement; and plumbing repairs.

The landlord testified that the tenants had not cleaned the carpet at the end of the tenancy and so he had it cleaned. After the new tenant moved into the rental unit the new tenant complained the carpet was not clean enough and wanted the landlord to pay for replacing the carpet and the landlord testified the carpet was changed.

The landlord seeks compensation for plumbing repairs stating that plumbing parts had been removed from the jetted tub and shower fixtures and that he had to have these

repaired. The tenant testified that plumbing problems existed at the start of the tenancy and were never repaired during the entire tenancy and they should not be held responsible for fixing them now.

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.

In relation to the landlord's claim for cleaning the rental unit, based on the tenants testimony I accept the landlord is entitled to \$350.00 for cleaning. However, I find the landlord has failed to establish any further grounds for compensation claim for cleaning and carpet cleaning. I dismiss this portion of the landlord's claim.

As to the landlord's claim for plumbing repairs and in the face of the contradictory testimony of both parties, I find the landlord has failed to establish the tenants caused any plumbing damage to the rental unit. I dismiss this portion of the landlord's claim.

As the landlord replaced the carpet in the rental unit at the request of the new tenant, I find the landlord cannot hold these tenants responsible for these costs and I dismiss this portion of the landlord's claim.

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.

Based on the testimony of both parties I find the landlord filed an Application for Dispute Resolution, claiming against the security deposit, within 15 days of receipt of the tenants' forwarding address. As a result, I find the landlord has complied with Section 38(1). I dismiss the portion of the tenant's Application seeking to double the amount of the security deposit.

As to the tenants' claim for compensation for leaving the rental unit early, I find the tenant has failed to establish the effective date of their notice to end tenancy and in so doing cannot now establish whether or not they left earlier than intended. I dismiss this portion of the tenants' Application.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$350.00** for cleaning. I also find the tenants are entitled to the return of the balance of their security deposit in the amount of **\$1,050.00**.

As both parties were, at least, partially successful, I dismiss both parties Applications to recover the filing fee from the Respondent parties.

I grant the tenants a monetary order in the amount of **\$1,050.00**. This order must be served on the landlords. If the landlords fail 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.

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: October 04, 2011.

Residential Tenancy Branch