



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenants applied for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38. Both parties applied to recover their filing fees for their applications from the other party pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenants confirmed that they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on September 14, 2011. The landlord confirmed that Tenant HK handed him a copy of the tenants' dispute resolution hearing package on September 23, 2011. Both parties agreed that they also received one another's written evidence package including photographs. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage or losses arising out of this tenancy? Which of the parties are entitled to retain or obtain the tenants' security deposit? Are either of the parties entitled to recover their filing fees for their applications from the other party?

Background and Evidence

Tenant HK and her previous roommate commenced a one-year fixed term tenancy for this rental unit on April 1, 2009. At the expiration of that term on March 31, 2010, that tenancy continued as a periodic tenancy. Commencing on August 1, 2010, Tenant TE joined Tenant HK in a new one-year fixed term tenancy agreement for this rental unit. Monthly rent by the time the tenants vacated the rental unit on August 30, 2011 was set

at \$1,295.00, payable in advance on the first of each month. The landlord continues to hold the \$647.50 security deposit paid by Tenant HK and her previous roommate on March 5, 2009.

The landlord applied for a monetary award of \$1,184.20 and for permission to retain the security deposit for this tenancy to partially offset that award. The landlord supplied the following list of items that the landlord maintained were damaged beyond reasonable wear and tear by the end of this tenancy:

Item	Amount
4 Blind Strips	\$40.00
4 Light Bulbs	20.00
Damage (Mould) to Master Bathroom Ceiling	500.00
Cleaning (3 hours @ \$75.00 per hour)	225.00
Window Coverings Cleaning	110.00
Carpet Cleaning	123.20
Balcony Door Screen	110.00
Damaged Remote Control for Parking	56.00
Total Monetary Award Requested	\$1,184.20

The tenants applied to recover all of the \$647.50 security deposit retained by the landlord. They maintained that there was an ongoing problem with mould in the master bathroom throughout much of this tenancy. They entered photographic and written (emails exchanged with the landlord) to support their claim that the landlord had not attended to mould problems in the master bathroom.

The landlord entered undisputed written evidence regarding the April 1, 2009 joint move-in condition inspection report and the August 30, 2011 joint move-out condition inspection report. In the joint move-out condition inspection report, Tenant TE gave her written consent to allow the landlord to deduct for all but two of the items outlined in the landlord's above-noted application. Tenant TE specifically noted on that report her disagreement with the landlord's claim for "any charge for the mold in the M bath or replacing the functional garage door opener." Although the landlord did not provide a specific dollar amount for cleaning costs in the move-out report, the landlord did include an estimate of 2-3 hours of cleaning at \$75.00 per hour. Tenant TE agreed to this estimate by signing the portion of the move-out condition inspection report that authorized the landlord to retain part of the security deposit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. This provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In this case, I find that the landlord applied for dispute resolution for authorization to retain the security deposit for this tenancy within 15 days of the end of this tenancy. As such, the tenants are not entitled to a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the full security deposit.

I find that Tenant TE did give her written authorization to retain portions of the security deposit to offset the following damages or losses arising out of this tenancy.

Item	Amount
4 Blind Strips	\$40.00
4 Light Bulbs	20.00
Cleaning (3 hours @ \$75.00 per hour)	225.00
Window Coverings Cleaning	110.00
Carpet Cleaning	123.20
Balcony Door Screen	110.00
Total Monetary Award	\$628.20

I find that the landlord is not entitled to a monetary award for his claims for the disputed items included in his application for dispute resolution. The landlord testified that the

\$500.00 cost he sought to repair the mould in the master bathroom was based on his estimate of what these repairs would cost. Although the tenancy ended in August 2011, the landlord has not completed these repairs and presented no receipt, invoice or estimate for any portion of this work. I also find that the landlord has not satisfied to the extent necessary that the tenants were responsible for the mould damage to the master bathroom. I find that the landlord's email responses to repeated requests from the tenants to repair this damage were not comprehensive and placed the full responsibility for remedying what appears to have been an ongoing problem to the tenants. While the tenants may have been at least partially responsible for this damage, I find that the landlord's failure to attend to this matter after the tenants vacated and the landlord's failure to provide any receipts, invoices or written estimates disentitles the landlord from any monetary award for this item. I dismiss the landlord's claim for this item without leave to reapply.

The landlord provided a photograph to support his claim that the tenants damaged one of the remote controls to access parking in the rental property. The damage was limited to a broken plastic ring at the end of one of the remote controls. The landlord did not dispute the tenants' claim that both remote controls function properly. The landlord testified that he has not incurred any costs to replace or repair the damaged remote control. Since the landlord has not demonstrated any actual loss for the slightly damaged but admittedly perfectly functional remote control, I find that the landlord is not entitled to a monetary award for this item. I dismiss the landlord's claim for this item without leave to reapply.

I have also considered both parties' applications to recover their respective filing fees from one another. Under these circumstances, the only legal way for the landlord to have obtained authorization to retain a portion of the security deposit and a monetary award was to file an application for dispute resolution. Consequently, I find that the landlord is entitled to recover his filing fee for this application from the tenants.

The tenants did not need to apply for dispute resolution to restrict the amount of the landlord's claim for a monetary award to those items Tenant TE had agreed to allow him to retain when she signed the joint move-out condition inspection report. As such, I find that the tenants are not entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover for damage and losses as agreed to in writing by one of the tenants at the joint move-out condition inspection, to recover the landlord's filing fee for the

landlord's application, and to retain the security deposit in partial satisfaction of the monetary award issued.

Item	Amount
4 Blind Strips	\$40.00
4 Light Bulbs	20.00
Cleaning (3 hours @ \$75.00 per hour)	225.00
Window Coverings Cleaning	110.00
Carpet Cleaning	123.20
Balcony Door Screen	110.00
Filing Fee for Landlord's Application	50.00
Less Security Deposit	-647.50
Total Monetary Order	\$30.70

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the landlord's application for a monetary award for damage caused to the master bathroom and to one of the parking remote controls without leave to reapply. I dismiss the tenants' application to recover their filing fee without leave to reapply.

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: November 29, 2011

Residential Tenancy Branch