Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant filed her application requesting the return of double the security deposit and pet damage deposit, and to recover the filing fee for the Application.

The Landlords filed requesting monetary orders for compensation for damage or cleaning of the rental unit, for money owed or compensation under the Act or tenancy agreement, to retain the security deposit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to the return of double the security deposit and pet damage deposit?

Are the Landlords entitled to the monetary claims being made?

Background and Evidence

This tenancy began on April 15, 2009, with the parties signing a written tenancy agreement on April 8, 2009. The monthly rent was set at $950.00.

Both parties agree that the Tenant paid the Landlord a security deposit of $500.00, and an heating oil deposit of $200.00. The Tenant claims that she also paid the Landlord a $475.00 pet damage deposit. The Landlord claims this was not a pet damage deposit, but rather the rent for ½ a month, as the Tenant moved in on April 15, 2009.

The written tenancy agreement sets out the security deposit of $500.00 and the heating oil deposit of $200.00. There is no indication on the tenancy agreement that a pet deposit of $475.00 was paid or received.

Both parties agree that the Landlord did not perform incoming or outgoing condition inspection reports in accordance with the Act.

The Tenant testified that she vacated the rental unit on July 27, 2011, and handed the Landlords her forwarding address in writing on July 15, 2011. The appearing Landlord did not recall the specific date she received the forwarding address in writing, however, she testified she had the forwarding address before the Tenant filed her claim on August 31, 2011. The Landlords filed their claim on October 24, 2011. The Tenant did not sign over a portion of the deposits and the parties had not been to dispute resolution before.

The Landlord testified that the Tenant left the rental unit in a mess. The Landlord has provided receipts from a cleaning company in the amount of $134.40, along with a letter from the company indicating that cleaning had to be done.

The Landlords claims the Tenant took down the window blinds in the rental unit but did not replace the brackets for these, and claim $25.40 and $28.22 for these. The Tenant agreed she had put up curtain and taken down the blinds.

The Landlords claim the Tenant, or her children, left stickers on the walls of the rental unit and on a cabinet. The Tenant agreed that stickers had not been removed.

The Landlords claim most of the cost of the sticker removal was included with cleaning the unit. The Landlords claim they had to paint walls due to the stickers and claim $11.54 for painting supplies.

The Landlords also claim for cleaning up the yard, for a towel rack removed from the rental unit, for a broken kitchen shelf and for the re-hanging of closet doors.

The Tenant stated that she did not damage a shelf in the kitchen. She stated the closet doors were continually falling off and finally she just left them off. She denies the other claims of the Landlord.
The Landlords provided photographs of the rental unit along with some invoices in support of the claim.

Both parties agree the photographs were taken during the time the Tenant was in the process of moving out.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find that the Landlords are in breach of sections 24, 36 and 38 of the Act. By failing to perform incoming or outgoing condition inspection reports the Landlords have extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

There was also no evidence to show that the Tenant had agreed, in writing, that the Landlords could retain any portion of the security deposit.

The Landlords had not applied for arbitration within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant.

The security deposit is held in trust for the Tenant by the Landlords. At no time do the Landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

Nevertheless, I also find that the Tenant has insufficient evidence to prove she paid a pet deposit to the Landlords. I accept the written agreement as evidence that the Tenant paid a security deposit of $500.00 and an oil deposit of $200.00.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords must pay the Tenant the sum of **$1,200.00**, comprised of double the security deposit (2 x $500.00), and the $200.00 oil deposit (which I explain below), ***subject to any set off from the Landlords' claims as described below***.

I find that the Tenant has breached section 37 of the Act by failing to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

I find that the Landlords have proven the cleaning of the rental unit cost them $134.40. I also find the Landlords are entitled to recover the costs of $25.40 and $28.22 for replacement brackets, as the Tenant admitted she removed the blinds during the tenancy. She was responsible for the return of these and failed to do so.

I also allow the Landlords' claim to paint walls due to the stickers and allow $11.54 for painting supplies. I also allow the Landlords a nominal amount of $25.00 to re-hang the closet doors. The Tenant should have reinstalled these, or informed the Landlords they needed an adjustment if they were constantly falling off.

I deny the Landlords' other claims, as I find they had insufficient evidence to prove these. For example, the Landlords had no evidence that the oil tank was left empty, which is evidence they should have obtained when and if they had the tank filled.

Furthermore, the Landlords failed to perform condition inspection reports. Consequently they had insufficient evidence as to the condition of the rental unit prior to the tenancy.

Therefore, I find the Landlords have established a monetary claim against the Tenant in the amount of **$224.56** comprised of the above described amounts, ***subject to any set off from the Tenant's claims as described above***.

I find that both parties have been partially successful in their claims and therefore, I set off the filing fees for the Applications against each other, and make no award for the filing fee for the Application.

Pursuant to section 72 of the Act, I set off the awards made to both parties as follows: (Tenant $1,200.00) – (Landlords $224.56) = $975.44 owed to the Tenant by the Landlords.

Therefore, I grant and issue the Tenant a monetary order in the amount of **$975.44, payable by the Landlords.**

The Tenant is given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act and 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 30, 2011.

Residential Tenancy Branch