



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, RR, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for her \$15,562.50 and a request for recovery of the \$100 .00 filing fee.

The landlord's application is a request for a monetary order for \$3375.20.

Background and Evidence

The tenant testified that:

- She is requesting the return of both her damaged deposit and her pet deposit because she left the rental unit clean and undamaged.
- She has supplied photos that show that the rental unit was clean, and the carpets had been cleaned.

- The photos show that she also left the rental unit undamaged.
- She is also requesting the return of the money paid for parking fobs, as those were returned at the end of the tenancy.
- She is also requesting the return of all the rent she paid during the tenancy, because there were mould issues in the rental unit which were not dealt with and therefore she feels that the rental unit was not maintained in a safe manner and she has had loss of use and enjoyment of the rental unit.
- Although she did not put any complaints or request in writing regarding the mould issues, she did speak to the previous manager; however nothing was ever done.
- She has provided at a sworn affidavit from the previous manager in which she discusses mould issues in the building.
- She is also asking for an order that the landlords pay for her cost of swearing an affidavit for this hearing.

Therefore the total amount she is requesting is as follows:

Return of damage deposit	\$897.50
Return of parking remote fees	\$80.00
Cost of affidavit	\$25.00
Return of all rent paid during the tenancy	\$14,360.00
Filing fees	\$100.00
Total	\$15,662.50

The landlords testified that:

- They are requesting an order to allow them to keep the full security deposit/pet deposit, because the tenant did not have the carpets professionally cleaned at the end of the tenancy and they also had to repaint the rental unit due to the fact that the walls had been painted a dark color.
- The tenant also failed to pay August 2011 rent and as a result was evicted pursuant to a 10 day Notice to End Tenancy.

- They attempted to re-rent the unit in August however were unable to do so and therefore they lost the full August 2011 rental revenue.

Therefore the total amount that the landlords are requesting is as follows:

August 2011 parking fee	\$90.00
August 2011 late fee	\$20.00
August 2011 NSF	\$25.00
Carpet cleaning	\$95.20
Painting	\$1300.00
Filing fee	\$50.00
Total	\$3375.20

In response to the landlord's testimony the tenant testified that:

- She does not dispute the parking fee, late fee, or NSF charge.
- She does dispute the August 2011 lost rental revenue claim however, because the landlord accepted a post-dated cheque for August 2011 and then issued her a Notice to End Tenancy.
- She complied with a 10 day Notice to End Tenancy and vacated on August 12, 2011.
- Further, as stated in her claim, she feels that she should not have to pay any rent for the full term of the tenancy because she did not live in a healthy environment.
- She disputes the claim for carpet cleaning because as shown in her photos she left the carpets in a very clean condition having cleaned them herself.
- She also disputes the claim for painting because she did not paint the dark color in the rental unit, that color was already there when she moved in as stated in the affidavit from the previous manager.
- Further since there is no claim whatsoever of pet damage, the landlords should be returning her full pet deposit.

Analysis

It is my decision that I will not allow the tenants claim for return of any rent, as I am not convinced that the landlords were ever informed of any mould problem in the rental unit prior to the end the tenancy.

The tenant claims that she informed the previous manager of mould issues; however there is nothing in the previous manager's affidavit stating that she had complaints from this tenant about mould issues.

It is my finding however that the landlords should have returned the tenants pet deposit of \$200.00 and the parking remote deposit of \$80.00, as there is no claim of any pet damage and the tenant return the parking remotes.

I will not however allow the tenants claim for return of the damage deposit; because it is my finding that the tenant is liable for the full rental revenue for the month of August 2011.

The tenant was required to pay her rent on August 1, 2011 and since she paid it with a post-dated cheque, the rent is not considered to have been paid on time and the landlords did have the right to give her a Notice to End Tenancy.

Therefore since the landlords were not able to re-rent the unit in the month of August, the tenant is liable for the full August 2011 rent of \$1795.00.

I also deny the tenants claim for swearing and affidavit as that is the cost of the dispute resolution process and I have no authority to award costs other than the filing fee.

I will allow \$50.00 of the tenants filing fee however because I have allowed a portion of the tenants claim.

As stated above I will allow the landlords claim for August 2011 rent, parking fee, late fee, and NSF fee.

I deny however the landlords claim for carpet cleaning because I am not convinced that the carpets required cleaning. The photo evidence provided by the tenant indicates that the carpets were in a reasonably clean condition and in fact the landlord testified that the carpets looked fair, but they require professional cleaning. The Residential Tenancy Act only requires the tenant to maintain reasonable cleanliness and the landlord cannot require the tenants to have carpets cleaned professionally at the end of the tenancy.

I also deny the claim for painting the rental unit, because the landlords have not met the burden of proving that this tenant changed the paint color in the rental unit and in fact the affidavit from the previous manager states that the rental unit had already been painted this color prior to the beginning of the tenancy.

I will allow the landlords claim for the filing fee however as I have allowed a large portion of the claim.

Therefore the total amount of the claims that I have allowed is as follows:

Tenants claim

Pet deposit	\$200.00
½ of \$100.00 Filing fee	\$50.00
Total	\$330.00

Landlords claim

August 2011 parking fee	\$90.00
August 2011 late fee	\$20.00
August 2011 NSF fee	\$25.00
Filing fee	\$50.00
Total	\$1980.00

Conclusion

I have allowed \$330.00 of the tenants claim, and \$1980.00 of the landlords claim, and I therefore set off the tenants claim against the landlords claim leaving a difference of \$1650.00. I therefore order that the landlord may retain the full security deposit of \$897.50 towards this claim and have issued a monetary order in the amount of \$725.50.

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