



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants 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 male tenant (the tenant) confirmed that the tenants received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on September 20, 2011. The landlord provided Canada Post Tracking Numbers to confirm this mailing to both tenants. I am satisfied that the landlord served this package to both tenants in accordance with the *Act*.

The tenant confirmed that the tenants received copies of the landlord's written evidence. The landlord said that she had received copies of the tenants' photographs, but had not received the tenants' written evidence. The tenant testified that the tenants sent the written evidence by email. Although service of written evidence by email is not allowed under the *Act*, it became apparent during the hearing that much of the tenants' written evidence was already known to the landlord (e.g., copies of the residential tenancy agreement, copies of joint move-in and move-out condition inspection reports). The landlord said that she was already aware of the tenants' steam cleaning of the rental unit a few days before the end of this tenancy, although she did not have a copy of the confirming letter from the company retained by the tenants to steam clean the rental unit. This document was read into evidence at the hearing.

At the hearing, I amended the spelling of the male tenant's name as it appears above.

Issues(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This fixed term tenancy commencing on March 1, 2011 was scheduled to end on August 31, 2011. The tenants vacated on August 30, 2011. Monthly rent was set at \$1,400.00, payable in advance on the first of each month. The tenants were responsible for the heat and hydro in this rental unit. The landlord continues to hold the tenants' \$700.00 security deposit paid on February 2, 2011.

The parties agreed that the landlord's agent (the landlord) and the female tenant conducted a joint move-in condition inspection on February 24, 2011 and a joint move-out condition inspection on August 30, 2011. The condition inspection reports for these inspections entered into written evidence by the tenants were not disputed. There was agreement as to the contents of the joint move-in condition inspection report. The landlord confirmed the tenants' assertion that a number of items were added to the signed joint move-out condition inspection reports after the female tenant signed that report. The landlord's agent testified that the owner of the property asked the landlord's agent to amend the joint move-out condition inspection report several days after the tenants vacated the rental unit as a result of the owner's subsequent inspection of the premises with the landlord's agent, without any participation by the tenants.

On September 15, 2011, the landlord applied for dispute resolution to retain the tenants' \$700.00 security deposit. The landlord submitted receipts for the following items that the landlord maintained were damaged during this tenancy:

Item	Amount
Repair and Paint Walls and Stairwell, Replace Shower Bar, Pressure Wash Driveway	\$168.00
Door Replacement and Replacement of Battery for Garage Door	234.50
Steam Cleaning of Carpets	149.59
Total of Above Items	\$552.09

The tenants provided written evidence confirmed at the hearing by the male tenant that the tenants agreed that damage to the door occurred during this tenancy for which they were responsible. The tenant said that the female tenant had spoken with the landlord's agent and advised her that the tenants were willing to accept that they had caused damage to the landlord's property that was repaired for \$234.50.

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. 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 tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Since the tenants were not disputing the landlord's claim for a monetary award of \$234.50 for the repair of doors and the replacement of the battery that operates the garage door, I allow the landlord's application for a monetary award in this amount.

I dismiss the landlord's claim for repairs, painting of walls, replacement of the shower bar and pressure washing. I find that the joint move-in and the joint move-out condition inspection reports signed by the female tenant do not identify major changes in the condition of this rental unit during the course of this short-term tenancy. I give no weight to the additions made to the joint move-out condition inspection report by the landlord after the female tenant signed this report. Changing a signed document by adding items not identified in the joint inspection is unacceptable. The landlord provided no photographs of the condition of the driveway before or after the tenancy and provided no evidence to support a claim that the pressure washing of the driveway after the tenants vacated exceeded reasonable wear and tear that could normally be expected. The tenant gave oral testimony that he did pressure wash the driveway once during this tenancy.

I also dismiss the landlord's claim for steam cleaning of the carpets on September 12, 2011. The landlord said that this work was done because the owner did not believe that the steam cleaning performed by the tenants' cleaning company on August 29, 2011 was sufficient. The tenants entered written evidence from their cleaning company confirming this steam cleaning and confirming that the company would have returned to the rental unit to steam clean the premises again at no charge if anyone had raised concerns about the adequacy of their work. The landlord confirmed that the owners proceeded to retain their own steam cleaners without raising this concern with the tenants. I find that the landlord's failure to raise concerns about the adequacy of the steam cleaning performed by the tenants' steam cleaners disentitles the landlord from any reimbursement for the landlord's steam cleaning expenses. The landlord has not

discharged the responsibility under section 7(2) of the *Act* to mitigate the tenants' exposure to the landlord's monetary losses arising out of the landlord's steam cleaning of the premises on September 12, 2011.

In the landlord's application for dispute resolution, the landlord noted that there were additional repairs and damage caused during this tenancy estimated at approximately \$600.00. In the application, the landlord stated that the landlord had estimates for this additional work which had not yet been done at the time of the application. At the hearing, the landlord said that this work had now been completed and that the landlord had bills for \$358.65. I advised the landlord that I was dismissing the landlord's claim for these items because the landlord had not demonstrated any actual losses by failing to provide any invoices or receipts for these items in advance of the hearing. I also dismiss these losses as I find that the signed joint move-in and joint move-out condition inspection reports show little change in the condition of the rental unit during this tenancy.

I allow the landlord to retain \$234.50 from the tenants' security deposit. I order the landlord to return the remaining \$465.50 from the tenants' security deposit plus applicable interest to the tenants forthwith. No interest is payable over this period.

Under the circumstances, I issue no order regarding the landlord's filing fee for this application. The landlord bears responsibility for this cost.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$465.50 which allows the landlord to retain \$234.50 from the tenants' security deposit. I dismiss the landlord's claim for recovery of the filing fee for this application. The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord 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.

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: December 07, 2011

Residential Tenancy Branch