



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNSD, FF
 Landlord MND, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of double the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on October 27, 2011, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by personal delivery on September 19, 2011, in accordance with section 89 of the Act.

The Landlord and Tenants both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is the Landlord entitled to retain the Tenant's deposits?

Tenant:

1. Is the Tenant entitled to recover double the security deposit?

Background and Evidence

This tenancy started on April 1, 2010 as a month to month tenancy. Rent was \$1,400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$700.00 on March 20, 2010.

The Tenant said he gave the Landlord written notice to end the tenancy on August 2, 2011. The Landlord said he accepted the Tenants' Notice to End the Tenancy and the tenancy ended on August 31, 2011. The Tenant continued to say that no move in or move out condition inspections were done, they gave the Landlord their forwarding address in writing on August 31, 2011 and they kept the unit in good condition throughout the tenancy. The Tenant said there was a fire in the unit caused by their son and they repaired the damage and repainted the rental unit. The Tenants said the unit was in good condition when they moved out. The Tenants provided photographs of the unit as of August 31, 2011 the move out day. The female Tenant said they had returned on August 31, 2011 to steam clean the carpets and do some painting, but the Landlord was there doing these things so the Tenants said they returned the keys and requested their security deposit back. The Tenants said they have not received their security deposit back and as a result they were told by the Residential Tenancy Branch, that they could apply for double the security deposit. The Tenant said they are requesting 2 X \$700.00 or \$1,400.00 as well as the filing fee for this proceeding of \$50.00.

The Landlord said the Tenants kept the unit in good shape through the tenancy, but the unit needed painting as the Tenants did not do a complete or adequate job when they painted the unit after the repairs from the fire were done. The Landlord said he entered the unit on August 31, 2011 and had the carpets cleaned and he painted portions of the unit. As well the Landlord said he is making a claim for damage to a sign and damage to the parking lot pavement due to a leak from the Tenants' car. The Landlord said his monetary claim is for \$1,380.00 and includes \$450.00 for his labour to paint and clean the unit, clean the parking area and an estimate of \$930.00 for materials, paint, estimates for repairs and costs to put this application together. The Landlord said he is requesting \$1,380.00 plus the filing fee for this proceeding of \$50.00. The Landlord said he did not have any receipts or invoices to verify his claims or the estimate that he had to repair the pavement in the parking area. The Landlord continued to say it was his oversight not to have sent in evidence to verify his claim.

Both parties provided photographic evidence to show the condition of the rental unit on move out and the Landlord provided an incident report from the fire department to prove the fire and damage actually happened. The Landlord also provided photographs of the damage caused by the fire. The Tenants agreed the fire was caused by their son, but they said the unit was repaired. The Tenants provided photographs to proof the repairs

were done. The Tenant and the Landlord said they both agreed the repairs from the fire were to be done by the Tenant.

The Landlord said he would like to settle the dispute by offering the Tenant that he would keep their security deposit of \$700.00 and they would call it a wash. The Tenants said they did not want to accept the Landlord's offer and would like to go to a decision from the Residential Tenancy Branch. The Landlord agreed to a decision from the Residential Tenancy Branch to resolve the dispute.

Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord's claim against the Tenants' security deposit for damage is extinguished. As a result, I dismiss the Landlord's request to retain the Tenants' security deposit.

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit. In this situation the Landlord has established there was damage to the rental unit from the fire and that the damage was caused by the Tenants' son, but this damage was during the tenancy and the Tenant and Landlord both said the unit was repaired by the Tenant. In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant has taken steps to minimize the loss.

Although the Landlord has established there was damage during the tenancy the Landlord has not established that the unit was in poorer condition on move out than it was on move in. As well the Landlord has not provided any verification of the amounts to rectify the loss or damage he has applied for; therefore the Landlord has not established grounds to prove his claim. Consequently I dismiss the Landlord's claim for damage or loss based on lack of evidence to establish a loss or damage existed at the end of the tenancy and that the Landlord did not provide any evidence to verify the amount of that loss or damage. I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

With respect to the Tenants' application for double their security deposit in the amount of \$1,400.00.

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.



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And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenants' testimony and written evidence that they did give the Landlord a forwarding address in writing on August 31, 2011. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution by September 15, 2011. Consequently I find for the Tenants and grant an order for double the security deposit of \$700.00 in the amount of \$1,400.00.

As the Tenants have been successful in this matter I order the Tenants to recover the \$50.00 filing fee for this proceeding from the Landlord. As the Landlord has not been successful in this matter I order the Landlord to bear the \$50.00 filing fee for his application, which he has already paid.

A monetary order has been issued to the Tenants for the following:

Double Security deposit	\$ 1,400.00	
Filing fee	\$ 50.00	
Total		\$ 1,450.00



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Conclusion

A monetary order has been issued to the Tenants' for \$1,450.00.

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*.

Residential Tenancy Branch