



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for a monetary order for compensation for damage to the unit, site or property and recovery of the filing fee, and an order to retain the security deposit.

The Tenants and a representative for the Landlords attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

A representative of the Landlord attended the hearing and stated that the Landlord was not available to attend the hearing of their Application as they were away. The Landlord provided a written submission in advance of the hearing stating that their representative “has authority to represent us and will have all pertinent information to conduct this hearing on our behalf”.

The Landlords’ representative stated that although he was not a witness to the interactions of the parties, he had information regarding the evidence between the parties as the Landlords had provided him copies of receipts and their evidence relating to the issues.

I determined that it was appropriate for the hearing to proceed as the Landlords had authorized a representative to act on their behalf.

Issue(s) to be Decided

Are the Landlords entitled to a monetary order for compensation for damage to the unit, site or property and recovery of the filing fee, and an order to retain the security deposit?

Background and Evidence

The parties agreed that they had a written tenancy agreement which commenced on March 01, 2011 and ended on August 01, 2011 when the Tenants moved out. The Landlords provided a copy of the written tenancy agreement in evidence prior to the hearing. The tenancy agreement states that the rent is \$800.00 per month, due on the first of the month. The tenancy agreement states that the Landlords hold a security deposit from the Tenants in the amount of \$400.00. The Tenants rented the basement rental unit of a house from the Landlords. The parties agree that the Tenants provided their forwarding address in writing to the Landlords on September 23, 2011. The Landlords filed an Application for dispute resolution on October 03, 2011. The parties performed a documented move in inspection of the rental unit, however the parties are in dispute over whether a move out inspection was offered or scheduled in accordance with the Act.

The move out inspection

The Landlords' representative stated that their claim is for \$1018.13 which consists of the security deposit, damage and losses incurred by the Landlord in regards to the rental unit. The Landlords' representative stated that the Tenants have extinguished their right to claim the security deposit and that the Landlords feel they are entitled to keep the security deposit and to additionally claim compensation for damages from the Tenants. The Landlords submitted a copy of some notes and copies of two Notices of Final Opportunity to Schedule a Condition Inspection. The Landlords' representative presented the Landlords' information and stated that the Landlords had advised him that there were several discussions with the Tenants about a move out inspection date with several dates being suggested previously. The Landlords' position is that the parties had initially agreed to a final inspection for August 01, 2011, however, at the Tenants request the Landlords agreed to change this to a different date. The Landlords' position is that the Tenants agreed to a date of August 03, 2011. The Landlords' submission notes state that a Notice of Final Opportunity to Schedule a Condition Inspection was posted at the rental unit on August 02, 2011 at 7:30 PM. The Landlords' position is that they called the Tenants at 9:30 AM on August 03, 2011 to confirm that they would attend the inspection at 10:00 AM, and the Tenants indicated that they would not be able to attend. The Landlords' position is that the Tenants told them to get a witness, however the Landlords notes stated that they would be going ahead with the scheduled move out inspection and it was up to the Tenants to provide a witness or attend themselves. The Landlords went ahead with the move out inspection and completed the form on August 03, 2011 at 10:00 AM, without the Tenants in attendance. The Landlords submitted a copy of the move in and move out inspection report in advance

of the hearing and the form indicates that the Tenants had only participated in the move in inspection portion.

The Tenants stated that they moved out as required by a One Month Notice to End Tenancy issued by the Landlord. The Tenants stated that the Landlord only offered to do a move out inspection once and the date was set for August 03, 2011. The Tenants stated that they advised the Landlords that they would vacate the rental unit on August 01, 2011. The Tenants stated that they left the keys in the carport on August 01, 2011 for the Landlord to pick up as they had completed moving. The Tenants stated that they had no access to the rental unit after August 01, 2011 and the Landlords would have been unable to serve them with documents such as Notices at that address as it was no longer their address. The Tenants testified that they received nothing in writing from the Landlords about any move out inspection and that they were not served with any Notice of Final Opportunity to Schedule a Condition Inspection as stated by the Landlords. The Tenants stated that the Landlords phoned them on the morning of August 03, 2011 and the Landlords were unreasonable and would not reschedule the move out inspection of August 03, 2011 to another date or to a later time.

The damages and losses claimed

The Landlords' representative stated that there are receipts for the items and costs incurred by the Landlords and he thought the Landlords had submitted all of this our office in advance of the hearing. The Landlords did not provide any receipts in advance of the hearing and they did not provide written submissions detailing their evidence about each of the items they claim were damaged by the Tenants.

The Landlords total claims are follows:

a.	Broken doorbell	\$25.00
c.	Broken blinds in two bedrooms	\$25.66
d.	Kitchen bulbs not replaced	\$11.48
e.	Bedroom window trim broken	\$20.00
f.	Broken motion light	\$40.00
g.	Carpet cleaning	\$168.00
h.	Carpet deodorizer	\$12.99
i.	Damage to bedroom closet carpet from cat replace underlay	\$60.00
j.	Damage to hallway bleaching and needs replacing	\$150.00
k.	Registered mail	\$10.00
l.	Application fee	\$50.00

m.	Request to keep security deposit in addition to costs, as Tenants failed to participate in move out inspection.	\$400.00
	Total claimed by Landlords:	\$1018.13

The Tenants testified that they were awarded a monetary order for \$100.00 against the Landlords for a prior hearing held on July 28, 2011, and that the Landlords were upset about this and wanted the matter cancelled. The Tenants stated that the Landlords failed to attend that hearing as well. The Tenants stated that they eventually succeeded in collecting the \$100.00 from the Landlords through Small Claims Court.

The Tenants testified that they received no copies of any receipts from the Landlords regarding the alleged damages, however at the end of the tenancy they had verbally agreed that the Landlord could deduct for the carpet cleaning and carpet deodorizing. The Tenants agree that they had a cat and that the cat sprayed in the closet, but they state that it did not damage the carpet and that it only got on the wall. The Tenants agree that they did not have time to do carpet cleaning in the rental unit and they agree with the Landlord's claim for carpet cleaning and deodorizing in the amounts of \$168.00 and \$12.99. The Tenants also stated that they agree with some money being owed for light bulbs, but that the cost of three light bulbs should not exceed \$9.00. The Tenants stated that they want the balance of their security deposit returned.

The Tenants do not feel that any carpet bleaching or carpet/underlay replacement was necessary in the hallway or the closet as they did not cause any damage.

The Tenants stated that they did not damage the doorbell at the rental unit and that there were only the remains of a doorbell when they moved in, so they should not be charged for this.

The Tenants stated that they did not damage the motion detector light near the entryway to the house, and that they believe it was damaged by the Landlords' other tenants who resided upstairs who would try to reposition the angle of the light and caused the damage to it. The Tenants stated that the motion detector light seemed to still be working when they moved out.

The Tenants stated that they did not damage a thermostat in the rental unit and that there was a thermostat on the wall but it was not connected to anything that they were aware of. The Tenants stated that they had no electrical heat in the rental unit and that the gas furnace was controlled by the upstairs tenants and the heat flowed through the vents from the gas furnace into their rental unit.

The Tenants disagree with the Landlords claim for blinds broken in two bedrooms. The Tenants stated that as set of bedroom blinds were removed by the Landlord when they moved in and were supposed to be replaced by the Landlord during their tenancy but were not and they had to put a blanket up over that window. The Tenants stated that their cat damaged one blind shaft in a set of blinds but they feel that this had minimal value and they should not be charged for this.

The Tenants disagree with the Landlords' claim for broken bedroom window trim and they stated they are not sure what the Landlords are referring to.

Analysis

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

The Landlords and their agent have mistakenly interpreted the extinguishment provisions of section 36 of the Act. Residential Policy Guideline 17 deals with Security Deposit and Set Off, and it states:

SET-OFF

4. In cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the Act.

If the amount awarded to the landlord does not exceed the amount of the deposit and interest, the balance may be retained by the landlord as the tenant has forfeited the right to its return.

In accordance with this policy, I find that the Landlords cannot be granted their request to keep the security deposit and not have any damages and losses be set off from the security deposit, if the Tenants are found to have extinguished their rights under section 36 of the Act.

Policy 17 also states that where a tenant's right to claim the security deposit is not extinguished the arbitrator should order return of the security deposit or balance of the security deposit to the tenant is any is found owing, whether or not the tenant has applied for arbitration for its return.

The Landlords filed their Application on October 03, 2011 which is within 15 days of receiving the Tenants forwarding address on September 23, 2011. Accordingly, I find the Tenants are not entitled to double their security deposit if any of it is found owing to them.

The move out inspection

The Landlords have claimed that the Tenants have extinguished their right to the return of the security deposit as they were offered two opportunities for a move out inspection and failed to participate on either occasion. One of the Notices of Final Opportunity to Schedule a Condition Inspection stated that it was served on the rental unit on the evening of August 02, 2011, however this was after the Tenants had moved out and no longer had access to the rental unit. The Tenants deny that any Notice of Final Opportunity to Schedule a Condition Inspection was ever served on them and their position is that there was only one date provided by the Landlord and it was by phone and no second opportunity was offered. As the evidence is contested by the Tenants, I am not satisfied with relying on the Landlords' documents submitted. The Landlords failed to attend the hearing and provide first hand testimony regarding the move out inspection and about service of any Notices of Final Opportunity to Schedule a Condition Inspection.

As a result I find that the Tenants have not extinguished their right to the security deposit under section 36 of the Act.

The damages and losses claimed

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant (in this case the Landlord) has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Tenants) pay for the loss the Applicant (the Landlords) must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent (Tenants) in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant (the Landlords) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find there is no dispute that the Tenants did not perform carpet cleaning or carpet deodorizing in the unit, and the Tenants indicated no dispute with these costs at the hearing. I allow the Landlords claim of **\$168.00** for carpet cleaning and **\$12.99** for carpet deodorizing.

I find that the Landlord submitted no evidence relating to the cost of replacing light bulbs in the rental unit and no receipts were submitted. The Tenants indicated that they did not replace some of the light bulbs in the rental unit, and they argue that they should not be valued any more than \$9.00 plus 12% HST (\$1.08), for a total of \$10.08. In the absence of sufficient evidence from the Landlord, I accept the amount of **\$10.08** as a reasonable amount to replace the light bulbs in the rental unit.

While the Tenants had a cat in the rental unit the condition and age of the carpet is unclear. I find that the Landlord's evidence regarding the carpet bleaching and carpet/underlay replacement are insufficient and no receipts were provided. Accordingly, I dismiss the Landlords request for these costs.

I do not find the move in condition inspection report particularly helpful. The move in condition inspection report has the exterior portion of the rental unit crossed out which suggests that there was no inspection of the exterior of the premises done at the time of move in. Additionally, I do not accept that the electrical outlets referred to on the move in inspection are the same thing as a thermostat. On the move in inspection the blinds are indicated as damaged at move in. Even if the Tenants' cat damaged one blind, I find that value of this negligible and I find that the blinds were already in deteriorated condition at move in according to move in inspection report. The Landlords provided illegible photocopies of photographic evidence of the condition of the rental unit and no receipts itemizing the labour, work, and supply costs involved. I find that the Landlords have failed to prove their claims for the door bell, motion detector light, thermostat, blinds, and bedroom window trim. As a result, I dismiss the Landlords claims for these costs.

The Landlords have also claimed \$10.00 for their registered mail costs associated with this Application. The Act does not provide for reimbursement of costs incurred in

preparing for the hearing or serving documents or evidence as part of the Application process. As a result I dismiss the Landlords' claim for registered mail costs.

As the Landlords have in part succeeded in their Application, I find that the Landlords are entitled to recover the **\$50.00** fee for this proceeding, pursuant to section 72 of the Act. This brings the balance of the amount owing to the Landlords to **\$241.07** (\$168.00 carpet cleaning + \$12.99 carpet deodorizing + \$10.08 light bulbs + \$50.00 filing fee).

The Landlords hold the Tenants' security deposit of \$400.00. I order that the Landlords retain \$241.07 from the security deposit, in full satisfaction of the claim. The balance of the security deposit is \$158.93 and must be returned to the Tenants forthwith.

In accordance with Policy 17, I find it reasonable to grant the Tenants an order under section 67 for the balance of the security deposit in the amount of **\$158.93**.

Conclusion

I grant the Landlords claim in part for carpet cleaning, carpet deodorizing, light bulbs, and the filing fee, however, the remainder of the Landlords claim for damages and losses is dismissed.

I find that the Landlords are entitled to \$241.07. I have ordered that the Landlords deduct \$241.07 from the security deposit (\$400.00) which they hold for the Tenants, and to return the balance of \$158.93 to the Tenants forthwith.

I find that the Tenants are entitled to monetary order pursuant to section 67 of the Act in the amount of **\$158.93**. This order must be served on the Landlords and may be filed in the Provincial Court (Small Claims).

The order accompanies the Tenants' copy of this decision.

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: January 12, 2012.

Residential Tenancy Branch