



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with application by the landlord and the tenants. The landlord applied for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants applied for recovery of the security and pet deposits and further monetary compensation.

The hearing originally convened on January 23, 2012. At that time the landlord stated that he had not received the tenants' evidence and application. The tenants properly served their evidence and application by registered mail on November 24, 2011 at the address the landlord provided for service. The landlord would have been deemed served with the tenants' application on November 29, 2011. However, I adjourned the hearing to allow the tenants to re-serve the landlord with their evidence and application. The hearing reconvened on February 15, 2012. The landlord and both tenants participated in the conference call hearings on both dates.

The landlord stated that he could not view the tenants' CD evidence. I therefore did not admit or consider the tenants' CD evidence.

At the reconvened hearing the landlord requested an amendment to his application to include \$151.20 for the cost of flea control. I allowed the amendment and heard from the parties on this issue.

I have reviewed all 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 landlord entitled to monetary compensation as claimed?

Are the tenants entitled to recovery of the pet and security deposits?

Background and Evidence

The tenancy began on October 1, 2010. At the outset of the tenancy, the tenants paid the landlord a security deposit of \$675 and a pet deposit of \$675. On September 24, 2011 the tenants gave the landlord notice that they intended to move out of the rental unit as of October 31, 2011 and provided their forwarding address for return of the pet and security deposits. The tenancy ended on October 31, 2011.

Landlord's Evidence

The landlord did move-in and move-out inspections with the tenants and gave them copies of the inspection reports. At move-out, the landlord identified several issues with the rental unit. The landlord has claimed the following monetary amounts:

- 1) \$120.68 to replace and install a fridge door handle – the tenants broke the fridge door handle and then put tape on it
- 2) \$222.88 for repairs to the baseboard heater and thermostat
- 3) \$99.68 to clean the gas fireplace
- 4) \$262.02 for carpet cleaning – the tenants only spot-cleaned the carpets
- 5) \$150 to replace a piece of carpet – a big piece of carpet was missing and covered with linoleum. The landlord acknowledged that the carpets were over ten years old.
- 6) \$300 for moving the washer, dryer and fridge without permission
- 7) \$151.20 for flea control – one week after the tenants moved out and the new tenants moved in, there were fleas in the rental unit.

In support of his evidence, the landlord provided photographs, as well as receipts for the fridge door handle, heater repairs, gas fireplace cleaning and flea control. The landlord did not provide a copy of the move-in and move-out condition inspection reports.

Tenants' Evidence

The landlord did not give the tenants copies of the move-in and move-out inspection reports.

The tenants' response to the landlord's claim was as follows:

- 1) Fridge door handle – the tenants noticed shortly after moving in that the fridge door handle was broken. The tenants taped down the handle..

- 2) Baseboard heater and thermostat – the tenants replaced the heater at the outset of the tenancy, and informed the landlord in an email that they had done so. The thermostat was worn out at the beginning of the tenancy.
- 3) Gas fireplace cleaning – it was not in the tenants' contract to clean out the gas stove heater; however, the tenants did clean it periodically, and it was working fine.
- 4) Carpet cleaning – the tenants had to have the carpets cleaned when they moved in, and they informed the landlord.
- 5) Carpet replacement – the carpet was already damaged when the tenants moved in, and the landlord was aware of the problem.
- 6) \$300 for moving the washer, dryer and fridge without permission – the tenants used their own washer and dryer during the tenancy and moved the landlord's washer and dryer into the garage. The tenancy agreement shows that laundry facilities were not included in the tenancy because the tenants told the landlord that they had their own. The tenants never moved the fridge.
- 7) Flea control – the tenants kept their dogs on flea treatment, and their dogs don't have fleas. The landlord's receipt for flea control is dated one month after the tenants moved out, and does not establish that the tenants were responsible for the fleas.

In addition to their claim for recovery of the pet and security deposits, the tenants claimed \$216 for missed work to attend the hearing. The tenants stated they were told that both tenants would have to appear in the hearing.

Analysis

Landlord's Claim

The landlord is entitled to the amounts claimed for carpet cleaning and gas fireplace cleaning, in the amount of \$361.70. As set out in the Residential Tenancy Policy Guidelines, tenants are generally responsible at the end of the tenancy for cleaning carpets and any fireplace they have used during the tenancy. The tenants ought to have had the landlord pay for the carpet cleaning and do any other necessary repairs at the outset of the tenancy, but the tenants are still responsible for cleaning the carpets at the end of the tenancy.

The remainder of the landlord's application is dismissed.

The landlord is not entitled to the amounts claimed for the fridge door handle, the heater and thermostat, or carpet replacement, as he did not submit a copy of the move-in

inspection report or other evidence to establish the condition and age of those items at the outset of the tenancy.

The landlord is not entitled to the amount claimed for moving the appliances. The landlord did not provide evidence of any monetary loss he incurred for moving the appliances, and appeared to be claiming some form of penalty not authorized under the Act. I accept the evidence of the tenants on this point that the landlord was aware that the tenants would be using their own washer and dryer during the tenancy.

The landlord is not entitled to the amount claimed for flea control, as he did not provide any evidence that the flea problem was caused by the tenants.

Tenants' Claim

The tenants are entitled to double recovery of their pet and security deposits, in the amount of \$2700. The landlord did not submit copies of the condition inspection reports in his evidence. I accept the testimony of the tenants that the landlord did not give them copies of the move-in and move-out condition inspection reports. When a landlord fails to give the tenant copies of the condition inspection reports, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did comply with the requirement to give the tenants copies of the condition inspection reports, he lost his right to claim the security and pet deposits for damage to the property.

The landlord was therefore required to return the security and pet deposits to the tenants within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The landlord received the tenants' forwarding address via email on September 24, 2011 and served the tenants with his application at that address. At the latest, the landlord received the tenants' same address in writing in the tenants' application, which was deemed served on the landlord on November 29, 2011. However, the landlord did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security and pet deposits for damage to the property was extinguished, and he failed to return the tenant's deposits within 15 days of having received the tenants' forwarding address, section 38 of the Act requires that the landlord pay the tenants double the amount of the deposits.

I dismiss the portion of the tenants' application regarding compensation for missed work to attend the hearing. In both the hearing package that the tenants received from the landlord as well as in the package for their own application, the tenants were provided

with information regarding the dispute resolution hearing. The written information states that a party may have an agent represent them in the hearing. The female tenant in this case could have appeared as agent for the male tenant. Furthermore, parties to a dispute resolution hearing are not normally awarded the cost of their lost wages to participate in the dispute resolution process.

Filing Fees

As the landlord's claim was partly successful, I find he is entitled to partial recovery of his filing fee, in the amount of \$25. As the tenants were mostly successful in their application, they are entitled to recovery of their \$50 filing fee.

Conclusion

The landlord is entitled to \$386.70. The tenants are entitled to \$2750.

I grant the tenants an order under section 67 for the balance due of \$2363.30. This order may be filed in the Small Claims Court and enforced as an order 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: February 22, 2012.

Residential Tenancy Branch