



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlord and by the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for double return of the pet damage deposit or security deposit.

An agent for the landlord company and both tenants attended the conference call hearing, and the landlord's agent and one of the tenants gave affirmed testimony. The tenants were represented by an advocate and assisted by an interpreter who was affirmed to well and truly interpret the proceedings from the English language to the tenant's language and from the tenant's language to the English language to the best of the interpreter's knowledge, skill and ability. A witness for the tenants was also called who gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided.

The landlord's agent stated that a number of documents were submitted as evidence with the Landlord's Application for Dispute Resolution, however those documents were not received prior to the hearing. The parties both provided additional documents as evidence to the Residential Tenancy Branch and to each other, however one evidence package was not received by the Residential Tenancy Branch within the time provided for in the *Residential Tenancy Act*. The tenants did not oppose the consideration of the landlord's late evidence, and all evidence and testimony received have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit site or property?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Are the tenants entitled to return of all or part or double the amount of the security deposit or pet damage deposit?

Background and Evidence

The parties agree that this month-to-month tenancy began on February 26, 2009 and ended on November 30, 2011. Rent in the amount of \$900.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$450.00 and no pet damage deposit was collected. A move-in condition inspection report was completed on the first day of the tenancy.

The landlord's agent testified that the tenancy ended after the tenants had been served with a 1 Month Notice to End Tenancy for Cause, but the tenants moved out earlier than the effective date of the notice, which was December 31, 2011. The landlord's agents had given a letter to several tenants within the building on November 12, 2011, including these tenants, that suite inspections would be conducted on November 21, 2011 because of complaints from tenants that cockroaches had infested the building. The inspection for this rental unit took place on November 21, 2011. The following day the landlord gave the tenants the notice to end tenancy because the inspection resulted in an apparent infestation of the bugs in the rental unit with no notification of the problem to the landlord. Also noted in the rental unit during that inspection was a damaged countertop in the kitchen, broken intercom, broken blinds in the bedroom and broken blinds on the patio window. The kitchen countertop had been water damaged by dishes drying on a rack which was not set to drain into the sink. The agent testified that the counter top was new when the tenants moved into the rental unit. The landlord claims \$300.00 although the invoice provided for this hearing states \$150.00; the landlord's agent testified that the invoice is for labor only and did not include the cost of materials, although no further evidence was provided. Further, the invoice for the patio blinds shows a cost of \$190.40 but the landlord had provided a Move-out Charge Analysis to the tenants before the tenants vacated indicating that the charge would be \$70.00 and the landlord claims the lower amount. Similarly, the invoice provided for replacing the bedroom blinds states \$54.10 but the Move-out Charge Analysis states \$50.00 and the landlord claims the lesser amount.

The landlord's agent further testified that the floors, fridge, stove and dishwasher were not cleaned by the tenants. Photographs were provided by the landlord, which also include photographs of several bugs within the rental unit. The landlord also claims \$70.00 for the cost of pest control, although the landlord's agent stated that the landlord is not sure where the bugs originated. The landlord's agent was in the rental unit and witnessed bugs crawling out of the kitchen cabinets during the inspection on November 21, 2011. The landlord claims \$70.00 for cleaning.

The landlord's agent also testified that the intercom was broken and put back together with tape, but is not working at all. The landlord replaced it at a cost of \$70.00 which the landlord claims from the tenants. No receipt or invoice for that cost has been provided.

The landlord's agent also testified that the parties did not complete a move-out condition inspection report, nor did the landlord offer the tenant 2 opportunities to complete that report; the tenant just gave back the keys. The tenants had a language barrier, and although the landlord's agent was not there at the time, and another agent of the landlord could have completed a move-out condition inspection report, it wasn't done due to the fact that the tenants did not speak English. When the tenants moved into the rental unit, the tenants had someone with them to interpret. After the tenants moved out, they only returned to complain that the landlord had withdrawn money from the tenants' bank account by way of an automatic debit, but it was too late to cancel that or avoid the automatic debit. When asked if the landlord received rent for December, 2011, the landlord's agent testified that it was received and was not returned to the tenants.

The landlord received the tenants' forwarding address in writing on December 14, 2011.

The landlord claims:

- \$900.00 for loss of revenue due to insufficient notice provided by the tenants;
- \$300.00 for the kitchen counter;
- \$70.00 for the patio blinds;
- \$50.00 for the bedroom blinds;
- \$70.00 for pest control costs;
- \$70.00 for cleaning the rental unit; and
- \$70.00 for the broken intercom.

The invoices provided by the landlord also contain items that were not discussed during the hearing, such as tile replacement, bi-fold door replacement, painting, baseboards, and laminate flooring.

One of the tenants testified that after the tenants were issued the notice to end tenancy by the landlord, the tenant asked the landlord's manager if they could move from the rental unit on November, 30, 2011 and the manager agreed. The manager had also agreed that the tenants would not be required to pay rent for December, 2011 but the money came out of the tenant's bank account by automatic debit. The money was refunded into the account, which proves that the landlord agreed that the tenants could move out on November 30, 2011 without paying any rent for December. The tenant also gave the landlord written notice, which the tenant understood to be an agreement by the landlord, and the parties both signed it. A copy of the document was not provided for this hearing.

The tenant also testified that the kitchen counter was fine when the tenants moved out, and the bedroom blinds also were in good shape. A few slats were missing from the living room blinds, but the slats could have been replaced by the landlord rather than replacing the whole set of blinds and tracks. Both sets of blinds were still operable; they opened and closed without difficulty;

The tenant further testified that the tenants cleaned the rental unit for 3 days prior to vacating. The dishwasher was not used at all during the tenancy because the tenants didn't know how to work it.

The intercom was fine when the tenants left the rental unit and was not broken, nor did the tenants notice any bugs in the rental unit while moving. The tenants returned to the rental unit once to recover December's rent and twice to get mail. At no time did any of the landlord's managers or agents talk to the tenants about completing a move-out condition inspection report.

The tenants' witness testified to being in the rental unit on November 25, 2011 to assist with cleaning for 3 hours prior to the tenants vacating. The witness stated that kitchen counter and blinds were in good condition. The witness entered the building by using the intercom, and the tenants let the witness into the building and then the witness went into the rental unit. The floors were clean and the intercom worked fine. The witness did not see any bugs in the rental unit.

Analysis

Firstly, the *Residential Tenancy Act* is clear with respect to condition inspections; the onus is on the landlord to ensure that the tenants are given at least 2 opportunities to complete the move-out condition inspection, and the regulations go into detail about

how those opportunities are to be given and how the inspection is to take place. The *Act* also states that if a landlord fails to complete the inspection in accordance with the regulations, the landlord's right to claim against the security deposit for damages is extinguished. In this case, the parties agree that the inspection did not take place and the landlord did not offer the tenant any opportunities to do so. Therefore, I must find that the landlord's right to claim against the security deposit for damages is extinguished.

The parties also agree that the landlord received the tenants' forwarding address in writing on December 14, 2011. The *Act* also states that within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants' forwarding address in writing, the landlord must return the security deposit to the tenants or make an application claiming against the security deposit. If the landlord does neither, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit. Having found that the landlord's right to claim against the security deposit was extinguished, I must find that the landlord has failed to comply with the *Act* by failing to return the security deposit to the tenants, and the tenants are therefore entitled to double the amount, or \$900.00.

The landlord's right to make a claim for damages is not extinguished under the *Act*, however, in order to be successful with such a claim, the onus is on the landlord to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce such damage or loss.

In the absence of a move-out condition inspection report, it is difficult to determine what damages may have been caused by the tenants that are beyond normal wear and tear. The tenant and the tenant's witness testified to cleaning the rental unit, and where a dispute arises, the onus is on the landlord to prove the damage, and I find that the landlord has failed to satisfy elements 1 and 2 of the test for damages with respect to cleaning the rental unit.

I further find that the landlord has failed to establish that the tenants are responsible for the broken intercom. The tenant and the tenant's witness testified that it was fine when the tenants moved from the rental unit, and the landlord has not provided any evidence with respect to the actual cost. Therefore, I find that the landlord has failed to satisfy elements 1, 2 and 3 of the test for damages.

The landlord's agent also testified that there is no way to determine where the cockroaches originated, and therefore I fail to see how the landlord can claim pest control costs as against the tenants, and that application must be dismissed.

With respect to the landlord's claim for blind replacement, I have no evidence to support the condition of the blinds when the tenants moved into the rental unit. I was not provided with a copy of the move-in condition inspection report. Perhaps that document was part of the evidence that the landlord indicated was provided with the Landlord's Application for Dispute Resolution, but it was not available for this hearing. I accept the testimony of the landlord's agent that the documents were provided, however it may very well be that the landlord's agent did not leave the evidence with the Residential Tenancy Branch and inadvertently took it away. In the absence of such evidence, the landlord's application for replacement of blinds cannot succeed.

With respect to the kitchen counter, I accept the testimony of the tenant that the tenants did not know how to use the dishwasher and washed dishes by hand. In the circumstances, I find it reasonable to assume that the softness on the counter was not evident at the beginning of the tenancy and I accept the testimony of the landlord's agent that it was soft and damaged at the end of the tenancy and had to be replaced. The landlord claims \$300.00 for that item but has only provided proof of having paid \$150.00 and stated that the invoice was for labour only; no further documentation has been provided to prove the amount paid for materials, and therefore I find that the landlord has established a claim for \$150.00.

With respect to the landlord's application for a monetary order in the amount of \$900.00 for the tenants moving without sufficient notice to the landlord, the tenant testified that the landlord had agreed after the landlord issued a notice to end tenancy that the tenants could vacate the rental unit by the end of November, 2011 without any further rent required for the month of December, 2011. I find that there is no evidence to the contrary. Further, the tenants testified that the landlord returned the money that was automatically withdrawn from the tenants' bank account for December's rent, but the landlord's agent testified that it has not been returned and is not sure why the landlord's application includes that claim. Therefore, I find that the landlord has failed to establish that the tenants owe any more money for rent than the landlord has already received.

In summary, I find that the tenants are entitled to double recovery of the security deposit, or \$900.00. The landlord has established a claim in the amount of \$150.00 for the damaged kitchen counter.

The *Residential Tenancy Act* permits me to set off one amount from the other, and I find that the tenants are entitled to a monetary order for the difference in the amount of \$750.00.

Since both parties have been partially successful with the applications before me, I decline to order that either party recover the filing fee from the other party.

Conclusion

For the reasons set out above, the tenants' claim for return of the security deposit is hereby awarded at \$900.00.

The landlord's claim for damages is hereby awarded at \$150.00, which is set off from the tenants' claim for return of the security deposit.

The landlord's claims for unpaid rent and to keep the security deposit are hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenants for the difference pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$750.00.

This order is final and binding on the parties and may be enforced.

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: March 08, 2012.

Residential Tenancy Branch