



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Code MNSD,

Introduction

On February 20, 2012, the landlords' application was dismissed for failure to attend at a hearing on February 16, 2012 and the tenants were granted a monetary order.

On March 7, 2012, the landlords made an application for review consideration, which was granted on the basis that they were unable to attend at the original hearing because of circumstances that could not be anticipated and were beyond their control. The Dispute Resolution Officer ordered the parties to participate in a new hearing, and the monetary order issued to the tenants was suspended.

This review hearing was convened in response to applications by the tenants and the landlords.

The tenants' application is seeking orders as follows:

1. Return of all or part of pet damage deposit or security deposit.

The landlords' application is seeking orders as follows:

1. To keep all or part of a pet damage deposit or security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Are the tenants entitled to the return of the security deposit and pet deposit?

Are the landlords entitled to keep all or part of the security deposit and pet deposit?

Background and Evidence

The tenancy began on June, 1, 2010. Rent in the amount of \$1,150.00 was payable on the first of each month. A security deposit of \$575.00 and a pet damage deposit of \$325.00 were paid by the tenants. The tenancy ended on May 29, 2011.

Tenants' Application

The tenant testified in June 2011, she went to the landlord's office and retrieved a cheque for the return of her security deposit and pet deposit. The tenant states the cheque she received was not for the full amount of the deposits paid. The tenants states the landlord provided reasons for not returning the full amount of the deposit, however she did not agree. The tenant states she never cashed the cheque issued by the landlord and the bank will no longer will honour the cheque as the cheque was written six months prior.

The tenant testified she did not give the landlords permission to retain any portion of her security or pet deposits. The tenants are seeking the return of double the deposits under the Act.

The tenant testified that on October 21, 2011, she sent the landlords a letter by registered mail asking for the return of her full security and pet damage deposit and provided her forwarding address. The tenant states the landlords still have not returned the full amount of either deposit.

The landlord testified they did receive the tenant's letter in October 2011. The landlord states he did not return the balance of the security deposit as the tenants did not leave the rental unit clean when the tenancy ended.

Landlords' Application

The landlords are seeking compensation for damages, and the cost to clean the rental unit due to the condition it was left in by the tenants.

The landlord claims as follows:

a.	Cleaning the rental unit	210.00
b.	Painting invoice	268.18
c.	Carpet cleaning invoice	75.66
d.	Replace broke door, paint and install (estimate)	182.94
e.	Filing fee	50.00
	Total claimed	\$786.78

The landlord testified that the tenant, landlord and two other people were present at the move-out inspection. However, the report was not done in writing.

The tenant testified a move-out inspection was never done with the landlord or any other person.

The witness for the landlords testified that she did attend at the rental unit to see what needed to be cleaned. The witness for the landlords testified no one other than the landlord was at that inspection and she has never met with the tenant for an inspection.

The landlord testified the tenants did not clean the rental unit when they left the rental unit and it took the cleaner fourteen hours to bring the rental unit to an acceptable level of cleanliness.

The witness for the landlord testified that she took photographs of the rental unit and it took fourteen hours to cleaning the floors, kitchen cupboards, stove and balcony.

The tenant testified the pictures taken are not of her rental unit. The tenant states that she left the rental unit clean.

The landlord testified the tenant cleaned the walls with a cleaner that left the walls sticky and they needed to be scrubbed and repainted.

The tenant testified that she cleaned some spots that were on the wall with paper towel and water. The tenant states she did not use any chemicals on the walls. The walls were not sticky when she vacated the rental unit.

The landlord testified the tenant did not clean the carpets at the end of tenancy as required.

The tenant testified she agrees she did not clean the carpets and agrees to the amount of \$75.66 to have the carpets cleaned.

The landlord testified that the tenant broke a door in the rental unit and agreed to pay to have the door fixed.

The tenant testified that she agreed to pay to have the door fixed; however, the landlord told her it would be only \$125.00 and is agreeable to pay that amount. The tenant states the invoice of \$182.94 is only an estimate.

Analysis

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

Tenants' Application

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the tenant. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act that the landlord pays the tenant the sum of **\$1,800.00**, comprised of double the security deposit on the original amount (\$575.00) held and double the pet deposit on the original amount (\$325.00).

Therefore, I grant a monetary order in the amount of **\$1,850.00** comprise of the above amount and the cost of filing the application, subject to any set off described below.

Landlords' Application

This is the landlords claim for damage or loss under the Act and therefore the landlords have the burden of proof to establish his claim on the civil standard.

To prove a loss and have the tenant pay for the loss requires the landlords to 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 Tenant in violation of the Act;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The parties disagree on the condition the rental unit was left in at the end of tenancy. The evidence of the landlords' witness was it took fourteen hours to clean the rental

unit. The evidence of the landlords' witness was she took photographs of the rental unit. The evidence of the tenant these are not pictures of her rental unit.

Section 23(1) of the Act states: The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 23(4) of the Act states: The landlord must complete a condition inspection report in accordance with the regulations and (5) both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

The landlord did not have a move-in condition inspection report signed by the tenant at the start of tenancy and the landlord and tenant did not sign a move-out inspection at the end of tenancy as required by the Act. The parties disagree on the condition the tenant left the rental unit at the end of tenancy.

I find the landlords have provided insufficient evidence to meet the burden of proof establishing the rental unit was left such a condition that fourteen hours of cleaning was required or that the tenants left the walls sticky that would require the walls to be repainted. The photographic evidence does not support fourteen hours of work to be performed and there is photographic evidence of damage to the walls. Therefore, I dismiss the landlords' claim for compensation for having the rental unit cleaned. I also dismiss the landlords' claim for having the walls repainted in the rental unit.

The parties agree the tenant did not clean the carpets as required by the Act. Therefore, I grant compensation for cleaning the carpets in the amount of **\$75.66**.

The parties agree the tenant damaged the door. Therefore, I find the landlord is entitled to be compensated for that damage. The evidence of the landlord was that he is seeking to recover \$182.94 and has filed in evidence an estimate to have the door replace, painted and installed. The actual cost to replace the door was \$88.48, which still required painting and installation. The tenants have consented to compensation in the amount of \$125.00. As a result, I will allow compensation for the door, paint and installation in the amount of **\$125.00**.

Therefore, I find the landlords are entitled to compensation in the amount **\$250.66** for the above specified amounts and the cost of filing the application.

As I have found the landlord is entitled to compensation, the monetary order issued to the tenants on February 20, 2012 is set aside.

As I have found the tenants are entitled to a monetary order in the amount of \$1,850.00 and I have also found the landlords are entitled to compensation in the amount of \$250.66, the tenants' monetary order will be off-set with the landlords' monetary claim.

Therefore, I grant the tenants a monetary order in the amount of **\$1,599.34**. Should the landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion

The monetary order granted to the tenant on February 20, 2012 is set aside.

The tenants are given a formal Order in the above terms and the landlords must be served with a copy of this order as soon as possible.

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: April 2, 2012.

Residential Tenancy Branch