



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

The Landlords filed seeking a monetary order for compensation for unpaid rent or utilities, for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of double the security deposit, to recover the filing fee for this proceeding and for other considerations.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on April 12, 2012, in accordance with section 89 of the Act. The Tenants said they one received one hearing package, but they would accept service of the Landlords' documents.

Service of the hearing documents by the Tenants to the Landlords were done by personal delivery on February 20, 2012, 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. Are the Landlords entitled to compensation for damages and if so how much?
3. Is there unpaid rent or utilities and if so how much?
4. Is the Landlord entitled to retain the Tenants' deposits?

Tenant:

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

Background and Evidence

This tenancy started on March 1, 2011 as a month to month tenancy. Rent was \$1,000.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$250.00 in October, 2009 during a previous tenancy and \$250.00 on March 1, 2012.

The Tenant said they moved out of the rental unit on January 31, 2012 and gave the Landlord their forwarding address in writing on February 2, 2012. The Tenants said there was no move in or move out condition inspection reports completed. 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 Tenants said they are requesting 2 X \$500.00 or \$1,000.00 as well as the filing fee for this proceeding of \$50.00.

The Landlord said they had a good relationship with the Tenants and they were surprised when they viewed the rental unit and found damage to the hardwood floors and walls. The Landlord said they had a contractor come in to assess the damage, but they have not repaired the unit and as a result have no receipts to show a loss has actually occurred. The Landlord agreed no condition inspection reports were completed, but the Landlord said the rental unit was new in October, 2009 and this is only the second tenancy so the Landlord said this should establish that the unit was in good shape at the start of the tenancy. The Landlord said the Tenants caused the damage to the floors and walls and it was going to cost an estimated \$640.00 to repair the damage. As well the Landlord said the Tenants have unpaid utilities in the amount of \$33.00 for gas and electrical. The Tenants said they were willing to pay the utilities in the amount of \$33.00.

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 not established a base line to determine if any damage was caused by this tenancy. 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 shown by photographic evidence there was damage to the floors and walls 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 that they have 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.

The Landlord has also applied for unpaid utilities in the amount of \$33.00. The Landlord has provided utilities bills and has shown the calculation of 20% of the bills which is the Tenants' share. As the Tenants agreed to pay their share of the unpaid utilities, I find for the Landlord and award compensation to the Landlord of \$33.00 in unpaid utilities.

With respect to the Tenants' application for double their security deposit in the amount of \$1,000.00.

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.

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 February 2, 2012. 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 Tenants, nor did the Landlord apply for dispute resolution by February 17, 2012. Consequently I find for the Tenants and grant an order for double the security deposit of \$500.00 in the amount of \$1,000.00 (2 X \$500.00).



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Office of Housing and Construction Standards

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 Landlords. As the Landlords have not been successful in this matter I order the Landlord to bear the \$50.00 filing fee for their application, which they have already paid.

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

Double Security deposit	\$ 1,000.00	
Filing fee	\$ 50.00	
Less unpaid utilities	\$ 33.00	
Total		\$ 1,017.00

Conclusion

The Landlords' application for damages and to retain the Tenants' security deposit is dismissed without leave to reapply.

A monetary order has been issued to the Tenants' for \$1,017.00.

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