



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, SS, FF

Introduction

This hearing concerns the landlords' application for a monetary order as compensation for damage to the unit, site or property / damage or loss under the Act, Regulation or tenancy agreement / retention of the security & pet damage deposits / permission to serve documents or evidence in a different way than required by the Act / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlords are entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

A previous hearing was held in a dispute between these same parties on February 15, 2012 with a decision issued by the same date (file #784801). In summary, the landlords were ordered to retain the security deposit of \$500.00 and the pet damage deposit of \$200.00, and a monetary order was issued in favour of the landlords for \$650.00.

Pursuant to a written tenancy agreement, the month-to-month tenancy began on September 1, 2009. Monthly rent of \$1,000.00 was due and payable on the first day of each month for the first three months of tenancy; thereafter, monthly rent was \$1,300.00. A security deposit of \$500.00 and a pet damage deposit of \$200.00 were collected. A move-in condition inspection report was not completed.

The tenancy agreement provides that a \$25.00 fee will be assessed for late payment of rent and for NSF rent cheques.

Following notice given by the tenants, the tenancy ended on or about October 28 or 29, 2011. A move-out condition inspection report was not completed. The parties presented conflicting testimony in relation to most aspects of the dispute; these include, but are not necessarily limited to, details around when exactly the unit keys were returned to the landlord and how many fees for late payment of rent and NSF cheques were already paid by the tenants during the term of the tenancy.

As to cleaning in the unit, the tenants agree that the inside of the microwave oven was not cleaned, even while they take the position that general cleaning was otherwise undertaken. The tenants also acknowledge that they did not have the carpets shampooed at the end of tenancy.

Analysis

Based on the documentary evidence and testimony, the various aspects of the landlords' claim and my findings around each are set out below.

\$575.00: fees assessed for late payment of rent (23 x \$25.00);

\$225.00: fees assessed for NSF cheques (9 x \$25.00);

\$55.00: overdraft fees assessed by bank (11 x \$5.00).

The landlords' documentary evidence in support of these aspects of the claim includes, but is not limited to, e-mail exchanges between the parties which go as far back as August 2009. For example, in an e-mail from one of the tenants to the landlord in May 2010, the tenant states, in part, "...please let us know if there are any late charges." Later in an e-mail from one of the tenants to the landlord in September 2010, the tenant states, in part, "Thank you again for your understanding."

The landlords' record of fees assessed for NSF and overdrafts is generic in that it provides no identifying information specific to dealings with the tenants.

Additionally, the tenants state that they have paid costs to the landlord which arise out of late payment of rent, and NSF cheques and overdrafts, even while they have not submitted any documentary evidence to that effect. They also state that some aspects of this part of the landlords' application were not brought to their attention until the landlords set out the details of their claim in evidence submitted for this hearing.

I find that there is no clear evidence of the landlords having directly addressed with the tenants any concerns during the term of the tenancy, related to the miscellaneous fees being claimed in this application. I also find on a balance of probabilities that the tenants likely settled certain of these fees with the landlords during the tenancy.

Further to all of the above, there is the "Doctrine of laches," which "Black's Law Dictionary" speaks to, in part, as follows:

"Doctrine of laches," is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

The neglect for an unreasonable and unexplained length of time under circumstances permitting diligence, to do what in law, should have been done.

Following from all of the above, I find on a balance of probabilities that the landlords have established entitlement limited to **\$200.00***.

\$700.00: full retention of deposits. As earlier noted, the disposition of the security and pet damage deposits was previously decided in the decision dated February 15, 2012. Further, I find there is insufficient evidence of “over holding” by the tenants, or of entitlement to compensation by the landlords for stress arising from various dealings with the tenants. Accordingly, no further consideration will be given to this aspect of the claim and it is hereby dismissed.

\$60.00: cleaning in the unit. Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

In the absence of the comparative results of a move-in and move-out condition inspection report, but in view of the tenants’ acknowledgement that the microwave oven had not been cleaned at the end of tenancy, I find that the landlords have established entitlement limited to **\$10.00***.

\$397.60*: carpet cleaning. The tenants testified that they vacuumed the carpets at the end of tenancy, but that the carpets were not in any other way cleaned by them before they vacated the unit. Residential Tenancy Policy Guideline # 1 addresses “Landlord & Tenant – Responsibility for Residential Premises,” and under the heading of CARPETS, provides in part:

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or

another occupant, has had pets which were not caged or if he or she smoked in the premises.

Following from all of the foregoing, I find that the landlords have established entitlement to the full amount claimed.

\$91.78: *re-keying locks to unit*. Section 37 of the Act, as above, provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The parties provided conflicting testimony around the nature of communication and understandings reached between them concerning return of the unit keys. They also took issue with each other in regard to when the locks were actually re-keyed. In the result, I find on a balance of probabilities that the landlords have established entitlement limited to \$45.89*, which is half the amount claimed.

\$1.41: *fee assessed for late payment of utilities*. During the hearing the landlord withdrew this aspect of the application.

\$50.00*: *filing fee*. As the landlords have achieved a measure of success with their application, I find that they have established entitlement to full recovery of the filing fee.

Total entitlement: **\$703.49***

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlords in the amount of \$703.49. Should it be necessary, this order may be served on the tenants, 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: May 24, 2012.

Residential Tenancy Branch