



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MND, MNDC, MNSD, FF

For the tenant – MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The landlords have applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenants have applied for the returned of the unpaid portion of their security deposit and to recover the filing fee from the landlord for the cost of this application. At the outset of the hearing the landlords withdrew their application for damage to the unit, site or property.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to keep part of the security deposit?
- Are the tenants entitled to recover double the unpaid portion of the security deposit?

Background and Evidence

The parties agree that this tenancy started on March 01, 2010 and ended on May 31, 2012. The tenancy agreement names three tenants for this rental unit. The tenants' paid a monthly rent of \$2,000.00 and a security deposit of \$1,000.00 was paid on February 25, 2010. The female tenant gave the landlord a forwarding address in writing on May 31, 2012. A Move in condition inspection report of the property was not completed by the landlord at the start of the tenancy however a move out report was completed at the end of the tenancy.

The landlord testifies that one of the tenants or a guest of the tenants came into the building with dirty shoes on. As this person got out of the elevator he tracked an oil like substance from the elevator straight to the tenants door. The landlord testifies that two members of the Strata Council went to the door and spoke to one of the male tenants who informed both Council members that his buddy had come home that day with dirty shoes on and had not taken his shoes off. The landlords were later given a notice from the Strata concerning this and the landlords testify that they sent the Notice from the Strata to the tenants to see if they wanted to dispute this.

The landlord testifies that they heard nothing back from the tenants' and a fine was imposed on their account of \$252.00 on June 15, 2012 for the cleaning of the carpet in the hall. The landlords testify that as each unit is seven to eight meters apart there was no confusion or doubt as to the marks being made to the tenants door and there was only footsteps to the door with no other steps made from other tenants walking in this oil.

The landlords testify that they returned the sum of \$875.00 to the tenants of which \$750.00 was the tenants' security deposit and the other \$125.00 was to buy back a fob from the tenants for the building. This cheque was dated June 04, 2012.

The tenant disputes the landlords' claims. The tenant agrees there was a stain on the hall carpet but disputes that this was caused by someone in their unit. The tenant testifies that

she did not receive a Notice from the landlord and had no contact with the Strata concerning this staining, The tenant testifies she wrote to the landlord about the Strata bill on July 07 to ask how could they say it was the tenants when this was a common area.

The tenant testifies that the other tenant told the Strata Council members that he did not know who caused the marks when the Strata confronted the other tenants they were just accusing him. The tenant states the Strata also spoke to her about the marks and were very accusing. The tenant testifies that had the landlords been fined this amount from the Strata why did the landlord not give the tenants a bill for this charge two years ago.

The tenant agrees that she did receive \$750.00 from her security deposit and another \$125.00 for the fob. The tenant states she now only seeks to recover double the unpaid portion of her security deposit and waives her right to recover double the total amount because the landlord did not return it within 15 days of the end of the tenancy.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on May 31, 2012. As a result, the landlord had until June 15, 2012 to return the tenants security deposit. I find the landlords did not return all of the security deposit and the landlords have extinguished their right to file a claim against the deposit as the landlord failed to complete a move in condition inspection of the property with the tenants in accordance with s. 24(2) of the *Act*. The Residential Tenancy Regulation # 17 state, in part, unless the tenant has specifically waived the doubling of the deposit, either

on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit: At the hearing the tenant waived her right to recover double the whole amount of the security deposit and seeks only to recover double the unpaid portion. Therefore, I find that the tenant has established a claim for the return of double the unpaid portion of the security deposit to the sum of **\$500.00** pursuant to section 38(6)(b) of the *Act*.

The landlord's application to keep part of the security deposit is therefore dismissed.

With regard to the landlords claim for a strata fine of \$252.00, I have carefully considered the documentary evidence and verbal testimony in this matter and find on a balance of probabilities that one of the tenants or a guest of the tenants did track an oil like substance on the carpet in the common hallway. Only one tenant appeared at the hearing today who may or may not have been present during a conversation between two Strata Council members and one other tenant concerning these marks on the carpet therefore any information this tenant has provided is deemed to be hearsay. I am satisfied therefore on a balance of probabilities with the landlords' evidence and testimony that the tenants or a guest of the tenants was responsible for these marks and as such the landlords are entitled to recover the fine imposed from the Strata on their account of **\$252.00**.

I further find that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep \$252.00 from the tenants' security deposit for money owed to the landlords for the strata fine.

It is my decision that both parties must bear the cost of filing their own applications.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim for \$252.00. This amount has been offset against the tenant's monetary claim of \$500.00.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$248.00**. The order must be served on the landlord and is enforceable through the Provincial Court 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: August 29, 2012.

Residential Tenancy Branch