



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

The tenants' application is seeking orders as follows:

1. Return of double the security deposit paid to the landlord; and
2. To recover the cost of the filing fee from the landlord.

The landlord's application is seeking orders as follows:

1. For a monetary order for damage to the unit;
2. For a monetary order for compensation for loss under the Act; and
3. To recover the cost of the filing fee from the tenant.

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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to the return of double their security deposit?

Are the tenants entitled to recover the cost of filing their application?

Is the landlord entitled to a monetary order for damage to the unit?

Is the landlord entitled to a monetary order for compensation for loss under the Act?

Is the landlord entitled to recover the cost of filing their application?

Background and Evidence

The tenancy began May 2009. Rent in the amount of \$1,746.00 was payable on the first of each month. A security deposit of \$850.00 was paid by the tenants. The tenancy ended June 30, 2012.

The parties participated in a move-out inspection, however, that inspection was not completed in writing.

Tenants' Application

The tenant testified that the landlord was provided with their forwarding address in an email dated May 31, 2012. The tenant stated that email was a regular way the parties communicated and the landlord responded to the email on June 1, 2012. Filed in evidence is a copy of the email thread.

The tenant testified the landlord returned \$258.00 of their security deposit and retained \$592.00 without their permission.

The landlord testified it was not until July 1, 2012, that the tenants provided him with their forwarding address, which was different than the one in the email of May 31, 2012.

The landlord acknowledged that he did not have the tenants' written permission to retain any portion of the security deposit and he retained \$592.00. The landlord further acknowledged that he did not file an application for dispute resolution within fifteen days of receiving the tenants forwarding address.

Landlord's Application

The landlord claims as follows:

a.	Plumbers invoice	\$924.00
c.	Cleaning and repair of unit after tenant move out	\$392.00
d.	Filing Fee	\$50.00
	Total Claimed	\$1,566.00

Plumbers invoice

The landlord testified on April 3, 2011, a plumber was called to the building complex as there was a water leak in unit #202. Upon investigate by the plumber and property management it appeared the water leak was coming from #303, which is the unit above #202.

The landlord testified that when the plumber attended unit #303, a person was just leaving the unit and stated that they had cleaned up a water leak. The plumber and property manager attended to the unit and they found that there was no leak due to any broken pipes or fixtures, rather carelessness of this person. Filed in evidence is the plumbers invoice.

Filed in evidence is a work order sheet of the plumber dated April 3, 2011. On the report it indicates in point 5) "Found tenant leaving #303 upon arrival, said he cleaned up a leak. I inspected (2) bathrooms of shut donn water no leak found! (S) and myself are suspicious of tenant carelessness." [Reproduced as written].

The tenant testified that he was on a holiday at the time and was not at the rental unit. The tenant stated that he was told by his roommate that the only water that was cleaned up on that day was water on the bathroom floor from when they stepped out of the shower.

Fine - notice of infraction by tenant

The landlord testified that he had to pay a fine of \$200.00 for a strata infraction that was issued to the tenant as a result of the tenant storing his bicycle and storage boxes on his balcony. The landlord seeks to recover the fine in the amount of \$200.00.

The tenant testified he sent an email to the landlord on March 7, 2012, asking the landlord to dispute the notice of infraction. The tenant stated the landlord failed to dispute the notice as requested and as a result in May he received a \$200.00 fine for the infraction. Filed in evidence is a copy of an email dated March 7, 2012.

The landlord disputes receiving any email from the tenant on March 7, 2012, regarding a request to dispute the notice of infraction the tenants received.

Cleaning of unit after tenant move out

The landlord testified that the tenant did not properly clean the unit at the end of tenancy and did not clean the carpets. The landlord stated these issues were discussed at the move-out inspection. The landlord stated he paid \$392.00 to have the unit and carpets cleaned. Filed in evidence is a copy of the receipt.

The tenant testified at the move-out inspection there were no problems with the cleanliness of unit and the landlord indicated at that time he would be returning the full amount of the security deposit.

The tenant stated they did not have the carpets cleaned during the tenancy as it was not required.

Analysis

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

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, each party has the burden of proof to prove a violation of the Act and a corresponding loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenants' Application

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

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, plus interest.

By failing to perform incoming or outgoing condition inspection reports in writing as required by the Act, the landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

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. 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.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

I must order, pursuant to section 38 and 67 of the Act, that the landlord pays the tenants the sum of \$1,750.00, comprised of double security deposit (\$850.00) on the original amounts held, and the \$50.00 fee for filing this Application.

The tenant did receive \$258.00 of the security deposit from the landlord, that amount is deducted from the \$1,750.00 and the tenant is granted an order for the balance due of **\$1,492.00.**

Landlord's Application

Plumbers invoice

On April 3, 2011, the plumber and property manager determined that there was a water leak coming from the tenants unit. Upon arrival to the unit, they were informed by the occupant that they had just cleaned up a water leak. It would not be logical to make such a comment if the occupant was only cleaning up water from stepping out of a shower.

The plumber inspected the unit and found no evidence of any broken pipes or faucets that would cause such a leak and believes the water leak was from the occupant being careless.

The occupant did not attend the hearing to provide any evidence. The tenant was away on a holidays during this incident and is only able to provide hearsay evidence.

I find the landlord has provided sufficient evidence to support that the occupant at the time was careless and caused the water leak. The landlord suffered a loss and is entitled to recover the cost he paid for the plumber to inspect the units in the amount of **\$924.00.**

Fine - notice of infraction by tenant

The tenant received a strata notice for an infraction, on March 7, 2012, the tenant email the landlord asking the landlord to file a dispute. The landlord disputed receiving the email and the email filed in evidence does not indicate a response from the landlord. It was the tenants responsible to follow up with the landlord to ensure that request was received. I find the tenant has violated the tenancy agreement, by not paying the fine for the strata infraction and the landlord suffered a loss. The landlord is entitled to compensation for loss in the amount of **\$200.00.**

Cleaning of unit after tenant move out

The parties participated in a move-out inspection, however, that inspection was not done in writing as required by the Act. The parties each provided a version of events that is equally probable, without further evidence, such as a move-out inspection report, the landlord has failed to prove the unit was left in an unreasonable state of cleanliness. However, the evidence of the tenant was the carpets were not steam cleaned during the tenancy.

Under Residential Policy Guideline #1, the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. 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.

As this tenancy exceeded one year the tenants were responsible to ensure the carpets were steam cleaned at the end of the tenancy. I find the landlord is entitled to compensation for having the carpets cleaned, and I award to the landlord a nominal amount of **\$100.00**.

I find that the landlord has established a total monetary claim of **\$1,274.00** comprised of the above described amount and the \$50.00 fee paid for this application.

As the tenants were granted a monetary order in the amount of **\$1,492.00** and the landlord was granted a monetary order in the amount of **\$1,274.00**. I order that the landlord's monetary order be offset from the tenants' monetary order. The tenants are granted a formal order for the balance due of **\$218.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants were granted a monetary order. The landlord was granted a monetary. The landlord's monetary order was offset with the tenants' monetary order. I grant the tenants a formal order for the balance due.

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: October 17, 2012.

Residential Tenancy Branch