



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF
 MNSD, FF

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlords and by the tenants. The landlords have applied for a monetary order for damage to the unit, site or property; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. One of the tenants has applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords for the cost of the application. The details portion of the tenant's application requests an order for double the amount of such deposit(s).

One of the landlords and both tenants attended the conference call hearing and each gave affirmed testimony. The parties provided evidentiary material prior to the commencement of the hearing to each other and to the Residential Tenancy Branch. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Is the tenant entitled to recovery of all or part of the pet damage deposit or security deposit or double the amount of such deposit(s)?

Background and Evidence

The parties agree that this tenancy began on July 1, 2010 as a fixed term tenancy which expired after 6 months and then reverted to a month-to-month tenancy which ultimately ended on July 28, 2012. Rent in the amount of \$850.00 per month was originally payable under the tenancy agreement and was increased to \$870.00 per month effective September 1, 2011, and there are no rental arrears. On June 28, 2010 the landlords collected a security deposit from the tenants in the amount of \$425.00, and no pet damage deposit was collected. The landlords currently hold that amount in trust.

The landlord testified that a move-in condition inspection report was completed at the commencement of the tenancy and a move-out condition inspection report was completed at the end of the tenancy. Both parties provided a copy of the reports which are both contained in one form and the report appears to be signed by one of the landlords and one of the tenants at both the move-in and the move-out sections.

The landlord further testified that the tenants damaged the countertop in the kitchen and provided a photograph showing spots on a multi-coloured counter. The spots were pointed out to the tenants who said they didn't use the counter and didn't damage it. The portion of the move-out condition inspection report stating that a tenant agreed to deductions from the security deposit was not filled out, and the landlord added "\$425.00" to that portion after the tenant had signed it; the landlord agrees that the tenants did not agree to any deductions from the security deposit. The landlord provided a copy of a letter dated September 10, 2012 from a countertop company stating that an evaluation was made by an estimator and in his expert opinion the damage caused by burning the surface of the countertop was irreparable. Also provided is a receipt dated September 21, 2012 for removal of the sink and countertop and installation of a new countertop, for a total of \$150.00. Further invoices dated August 29, 2012 in the amount of \$403.20 and July 30, 2012 in the amount of \$56.00 have also been provided.

The landlords called the tenants a few times to pick up their copy of the inspection reports as well as other mail, but the landlords went on vacation from August 13 to 17 or 18, 2012 and received the tenants' forwarding address in writing by regular mail upon their return. The Landlord's Application for Dispute Resolution was filed on September 12, 2012.

The tenant testified that on June 20, 2012 the tenants gave the landlord verbal notice to vacate the rental unit so that the landlords had more time to find a new tenant, then written notice was provided to the landlords on June 30, 2012. The landlord had completed an annual inspection on June 27 or 28, 2012 and only told the tenants that

the carpets had to be professionally cleaned; that inspection was not done in writing but the parties checked everything. The tenant didn't agree to have the carpets professionally cleaned because they weren't professionally cleaned at the outset of the tenancy. However, the tenant had the carpets cleaned and paid \$90.00 for that service. Then a week before moving out, the tenants told the landlords that they would be moving on June 27, 2012.

The tenant was present when the move-out condition inspection report was completed, but was standing behind the landlord who did the writing and didn't show it to the tenant at the time but advised the tenant that the tenants would be provided with a copy.

The tenants received the move-out condition inspection report on August 30, 2012 and asked to see the damaged countertop, but the landlords refused the request stating that there were new tenants in the rental unit. The tenants asked the landlords to give the new tenants notice to enter the rental unit, but the landlords refused stating they were going on vacation. The tenants disagree that they damaged the countertop.

The other tenant testified that the spots on the countertop that the landlord has complained about are exaggerated in the photograph. It's a multi-coloured countertop and the spots are difficult to see.

The tenant further testified that the landlord's letter shows they decided on July 28, 2012 to replace the countertop without having a professional opinion about a repair. The countertop was replaced on August 29, 2012 but the landlords didn't get the professional opinion until September 10, 2012. Further, the landlord's father did all the work and the invoice for \$150.00 is fraudulent, showing that the landlord paid the landlord's father \$150.00 in cash.

Analysis

Firstly, the regulations to the *Residential Tenancy Act* requires a landlord to give the tenant a copy of a move-out condition inspection report promptly and within 15 days of the later of the date the inspection is completed and the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished. In this case, the move-out condition inspection report is dated July 28, 2012 and the landlord testified to receiving the tenants' forwarding address in writing upon the landlords' return from vacation on August 17 or 18, 2012. The tenant testified to receiving a copy of the move-out condition inspection report on August 30, 2012, and therefore, I find that the landlords have complied with that section of the *Act*.

The *Act* also requires a landlord to return a security deposit in full or apply for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so, the landlord must repay the tenant double the amount of such deposits. In this case, the landlords received the tenant's forwarding address in writing on August 17 or 18, 2012 and the tenancy ended on July 28, 2012. The landlords filed the application claiming against the security deposit on September 12, 2012 which is well beyond the 15 days provided for in the *Act*. Therefore, I must find that the landlords are indebted to the tenants double the amount of such security deposit, or \$850.00.

The regulations to the *Residential Tenancy Act* also state that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at move-in and at move-out. The parties both signed and the tenants agreed that the reports adequately described the condition of the rental unit, and therefore, I find that the landlords have established a claim as against the tenants for the damaged countertop. The landlords have also provided evidence of the cost of the repair, and whether or not the landlord actually paid the landlord's father is immaterial to the outcome of this Decision. The landlords have an obligation to prove the claim, including the costs associated with the repair, and I am satisfied that the landlords have proven a claim in the amount of \$609.20.

In summary, I find that the landlords owe the tenants double the amount of the security deposit, or \$850.00 and the tenants owe the landlords the sum of \$609.20. Since both parties have been partially successful with the application, I decline to order that either party recover the filing fees from the other party for the cost of these applications.

I also find it prudent to set off the awards, and I hereby grant a monetary order in favour of the tenants in the amount of \$240.80.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$240.80.

This order is final and binding on the parties and may be enforced.

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: November 27, 2012.

Residential Tenancy Branch