



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenants filed for a monetary order for return of double the security deposit and pet damage deposit under section 38 of the Act, and to recover the filing fee for the Application.

The Landlords filed for an order to keep the security deposit and pet damage deposit in partial satisfaction of the claim, for a monetary order for money owed or compensation under the Act or tenancy agreement and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

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

Preliminary Issue

This hearing began on October 15, 2012, but was adjourned, with the agreement of both parties, to allow the parties to exchange evidence in accordance with the rules of procedure.

In the interim, both parties attempted to amend their claims to request additional monetary amounts. As I explained to the parties at the reconvened portion of the hearing, the rules of procedure do not allow such amendments to the Applications once the proceedings have commenced. Therefore, I do not allow the parties to amend their Applications for additional amounts.

Issue(s) to be Decided

Are the Landlords entitled to the relief sought?

Are the Tenants entitled to return of double the security deposit and pet damage deposit?

Background and Evidence

This tenancy began on September 1, 2010, with the parties entering into a written, month to month tenancy agreement. The Tenants paid a security deposit of \$600.00 and a pet damage deposit of \$600.00 on August 14, 2010, and the monthly rent was \$1,200.00.

On or about June 19, 2012, the Tenants gave the Landlords a letter with a notice to end the tenancy effective on July 31, 2012. The Tenants also provided the Landlords with the forwarding address to return the deposits to, in this letter.

Tenants' Claims

The parties agree that no incoming condition inspection report was performed.

The parties disagree whether or not the outgoing condition inspection report was performed in accordance with the Act and regulation. The Tenants testified that the Landlords performed an outgoing condition inspection report without the Tenants being present.

Landlords' Claims

The Landlords are claiming the rental unit was not cleaned to a reasonable state at the end of the tenancy.

The Landlords claim that they lowered the rent at the start of the tenancy because the rental unit was for sale and the Tenants agreed to weed the garden and look after the property for the purposes of showing the rental unit to prospective purchasers. However, after the tenancy ended the Landlords paid someone to clean up the yard and claim \$480.00 for this, for 24 hours of cleaning at \$20.00 per hour. The Landlords did not provide a receipt for this.

The Landlords claim that the Tenants did not take care of a strawberry bed and claim \$50.00 for this and also claim the Tenants broke a water sprinkler and claim \$25.00 for this. They have no receipts for these items.

The Landlords claim the Tenants broke a window at the rental unit and did not repair it. The appearing Landlord testified that when she entered the rental unit she saw a candle in front of the kitchen window, and when she moved the candle she noticed the window had a hole right through it. The Landlords allege the Tenants tried to hide this damage with the candle. The Landlords claim \$311.36 for replacing the glass and have entered a receipt for this into evidence.

The Landlords also claim that the Tenants' dog left a great deal of fur on the carpet in the living room and they claim \$67.20 for carpet cleaning. The Landlords entered a receipt in evidence for this amount from the carpet cleaning company.

The Landlords also claim \$150.00 for window cleaning, \$30.00 for furnace vents cleaning, \$22.50 to dust the walls, and \$15.00 to clean the ceiling fan. They had no receipts for these amounts.

The Landlords also claim for mileage to attend the rental unit.

In reply to the Landlords' claims, the Tenants testified there was no agreement to maintain the flower beds or do any weeding at the rental unit. The Tenants testified they mowed the lawns and removed snow from the sidewalks.

The Tenants testified they have no idea how long the chip was in the window and do not recall if the window was broken at the start of the tenancy.

The Tenants testified that they rented a steam cleaner to clean the carpets before they vacated the rental unit, although they have no receipt to prove this.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the following.

Tenants' Claims

I find the Landlords have breached section 24 of the Act by failing to perform an incoming condition inspection report. By failing to do this the Landlords have extinguished their right to claim against the deposits, pursuant to sections 24 and 38 of the Act. I also find the Landlords did not complete the outgoing condition inspection report in accordance with the Act, as the Tenants were not present for it. Regardless of how the outgoing report was performed, the Landlords had extinguished the right to claim against the deposits at the outset of the tenancy.

Therefore, pursuant to section 38 of the Act and policy guideline 17, I must order the Landlords to pay the Tenants double the security deposit and pet damage deposit, in the amount of **\$2,400.00** (2 x \$1,200.00), plus the **\$50.00** filing fee incurred for a total of \$2,450.00, *subject to any set off in the Landlords' claims below.*

Landlords' Claims

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage or loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

Furthermore, 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.

In this instance, I find the Landlords have proven that the Tenants failed to clean the carpets at the end of the tenancy.

Section 37(2)(a) of the Act required the Tenants to return the rental unit to the Landlord reasonably clean and undamaged, except for reasonable wear and tear. As “reasonably clean” is a broad definition of what is required, the Branch has provided Policy Guidelines to clarify the responsibilities of both landlords and tenants under the Act. These Policy Guidelines are not only based on the Director’s interpretation of the Act, but also on standard practices and procedures which have been developed and adopted over the years in the normal course of the residential tenancy business.

Policy Guideline #1, sets out the following:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. 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. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. **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.**

[Emphasis added.]

Based on the Act, the tenancy agreement and Policy Guideline 1, I find that the Tenants should have had the carpets professionally cleaned at the end of the tenancy as they had a pet in the rental unit. I allow the Landlords **\$67.20** for this, based on the invoice they provided.

I further find that the Landlords have proven the Tenants broke a window in the rental unit and failed to replace it. In this instance, I accept the testimony of the appearing Landlord over that of the Tenants. I find that it would be most unusual for the Tenants to not have noticed a window in the kitchen with a hole going through it at the outset of the

tenancy. I find on a balance of probabilities that it is more likely the Tenants broke the window during the tenancy.

I allow the Landlords **\$311.36** for the window replacement, based on the receipt provided in evidence.

I dismiss all other claims made by the Landlords as I find the Landlords did not have sufficient evidence, such as photographs of the dirty areas to prove these claims, or more importantly, copies of the receipts to verify what their losses were.

Therefore, I find the Landlords have established a total monetary claim of **\$403.56**, comprised of \$67.20 for carpet cleaning, \$311.36 for the window and \$25.00 toward the filing fee for the Application, *subject to a set off of the Tenants' monetary award*. I have reduced the filing fee for the Application as the Landlords had limited success with their claims.

As the parties each have been awarded monetary amounts, I offset the awards as \$2,450.00 to the Tenants less the \$403.56 to the Landlords, and order the Landlords to pay the Tenants the balance due of **\$2,046.44**. The Tenants are granted a monetary order for this amount which must be served on the Landlords and may be enforced in the Provincial Court.

Conclusion

Each of the parties received monetary awards, which have been set off. The Landlords must pay the Tenants the sum of \$2,046.44.

The Landlords extinguished any right to claim against the security deposit or pet damage deposit at the outset of the tenancy by failing to perform a condition inspection report in accordance with the Act. The Landlords must pay the Tenants double the security deposit and pet damage deposit, pursuant to section 38 of the Act.

The Tenants breached section 37 of the Act by failing to have the carpets professionally cleaned and by failing to repair a broken window at the rental unit. The Tenants must pay the Landlords for the carpet cleaning and window repair.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 30, 2012.

Residential Tenancy Branch