



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNSD, MNDC, FF
Tenants: MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended both landlords and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the residential property; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on July 1, 2011 as a month to month tenancy for a monthly rent of \$1,350.00 due on the 1st of each month with a security deposit of \$675.00 paid and that the tenancy ended on October 29, 2012.

The parties agree the landlord had provided the tenants with a cheque for the full amount of their security deposit but that the landlord placed a stop payment on that cheque after she was advised by the strata the tenants caused some damage to common areas.

The landlords testified that they were advised by the strata property management agent on October 30, 2012 that the tenants caused damage to a door on the 2nd floor and the elevator entrance on the 1st floor. The landlords also submit that the strata indicated that no other tenants or owners were moving in or out at the time these tenants moved on October 28, 2012 and that it was after they moved that the damage was discovered.

The landlords testified that they had not spoken to any of the witnesses nor were they given any witness names but that because they don't live on the residential property they must rely on the property management staff and that the company are a reputable property management firm. The landlords submitted that they were not aware of any witnesses who actually saw the tenants or anyone helping the tenants cause any of the damage.

The landlord submits that when she was informed of this damage she could not get agreement from the tenants for her to retain the amount of \$268.80 for the amount the strata was going to be charging her for repairing the damage.

The landlord submits that she provided a replacement cheque to the tenants in the amount of \$406.20 and filed her Application for Dispute Resolution seeking to claim against the deposit on November 8, 2012.

The tenants submit that despite never being provided with any proof of the damage in the form of a Condition Inspection Report or photographs until the landlords serve them with their evidence in January 2013 they had agreed to be responsible for the cost of repairs to the door on the 2nd floor. The tenants submit that they only agreed to be responsible because they did not know how they could dispute the claim as to their knowledge they were the only parties moving off the 2nd floor.

The tenants submit that there were several other parties moving in or out that same weekend. The tenants testified that the building manager advised them that she would not be available during the weekend for the tenants to get an elevator key but that they could get it by speaking to the occupants of unit 302 as they were moving out the same weekend.

The tenants seek return of double the security deposit because the landlords failed to return the full security deposit and provide the tenants with a copy of a move out Condition Inspection Report.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the

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

While I accept that the landlords were satisfied with the explanations provided by the strata property management as to the cause of the damage to the 2nd floor door and the 1st floor elevator entrance, when claiming compensation for any damage caused by tenants during a tenancy the burden is on the landlord to provide sufficient evidence that the tenants caused the damage.

As the landlords have failed to provide any witness testimony or statements that can attest to the tenants' involvement in causing any damage; that can confirm that the tenants were the only occupants moving in or out of the property that weekend; or that the damage was even caused by anyone moving in or out of the property let alone these tenants, I find the landlords have failed to provide sufficient evidence to establish that the damage was caused by the tenants. I dismiss the landlord's claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the evidence before me I find the tenancy ended on October 29, 2012 and that the landlords submitted their Application for Dispute Resolution on November 8, 2012. As such, I also find the landlord has complied with Section 38(1) by filing their Application for Dispute Resolution on the 10th day after the end of the tenancy.

Section 35 of the *Act* requires a landlord to complete a condition inspection report in accordance with the regulations. Section 18 of the Residential Tenancy Regulation stipulates that a report completed as a required under Section 35 of the *Act* must be provided to the tenant within 15 days of the inspection and receipt of the tenants forwarding address.

Section 36 of the *Act* stipulates that should the landlord failed to comply with any of the requirements under Section 35 the landlord extinguishes his right to claim against a security deposit or pet damage deposit for damage to the residential property.

While I accept, from the evidence and testimony provided that the landlords did not provide a copy of a Condition Inspection Report to the tenants within 15 days of the inspection or receipt of the tenant's forwarding address and therefore extinguished their right to claim against the deposit for damage to the property Section 38 (1) provides the landlord only two options for disbursement of the deposit: to return it in full to the tenants or file an Application for Dispute Resolution to claim against the deposit.

As Section 38(1) provides only these two options without any exemption if the landlord has extinguished his right to claim against the deposit and as I have found the landlord

has complied with the requirements of Section 38(1) I dismiss the tenant's claim for double the amount of the security deposit.

Conclusion

Based on the above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$675.00** comprised of the security deposit.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

In recognition that the tenants have received a cheque from the landlord in the amount of \$406.20 but have not cashed this cheque I order the tenants may cash this cheque and deduct this amount as partial satisfaction of this claim.

As both parties were largely unsuccessful in their claims, I dismiss both parties' request to recover the filing fee from the other party.

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: February 06, 2013

Residential Tenancy Branch