



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with applications by the tenants and the landlord. The tenants applied for double recovery of the balance of their security deposit and further monetary compensation. The landlord applied for monetary compensation and an order to retain the balance of the security deposit in partial compensation of her claim. Both tenants and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's application and evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Are the tenants entitled to double recovery of the balance of the security deposit?
Are the tenants entitled to further monetary compensation as claimed?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on June 1, 2012 as a fixed-term tenancy to end on June 1, 2013. At the outset of the tenancy the tenants paid the landlord a security deposit of \$1500. On May 29, 2012 the landlord and the tenants carried out a joint move-in inspection and completed a condition inspection report. The tenancy ended on March 1, 2013. The landlord and the tenants met at the unit on March 2, 2013 to carry out a move-out inspection, but they could not agree on the condition of the unit. The tenants gave the landlord their forwarding address in writing on March 2, 2013. On March 4, 2013, the landlord returned \$850 of the security deposit to the tenants, and retained \$650 of the

deposit. The tenants filed their application for return of the balance of the deposit on March 25, 2013. The landlord filed to keep the balance of the deposit on May 29, 2013.

Tenants' Application

The tenants stated that they did not give the landlord authorization to keep any portion of the security deposit, and they are therefore entitled to double recovery of the \$650 balance of the security deposit.

The tenants also stated that they had an alarm system installed in the rental unit and signed a three-year contract with the alarm company. The tenants believed that the landlord was benefitting from the alarm system, as her insurance premiums for the rental property would be lower. The tenants sought either an agreement from the landlord that she would take over the alarm system contract, or an order that the landlord pay the fee of \$903.03 for the breach of contract fee charged by the alarm company.

The tenants also claimed \$114.09 for their U-Haul costs; \$150 for fuel; \$379 for preparation time for the dispute resolution hearing; \$89.54 for mail forwarding; and \$300 for a "rent premium" which the tenants had to pay their new landlord for moving in early. The tenants stated that they had anticipated living in the rental unit for several years, but their tenancy ended early because there was a material change in circumstances. The tenants stated that at the outset of the tenancy the landlord gave the tenants permission to sublet two basement suites in the rental house, but the landlord received a notice that one of the basement suites must be removed. The tenants therefore could not afford to carry the additional rent, and they were forced to move out.

In response to the tenants' claim, the landlord stated that she did not want to take over the alarm system contract, and it was the tenants' own decision to enter into a three-year contract for the system when they only had a one-year tenancy agreement. The landlord stated that the tenants rented the entire house, and then they chose to operate a business by subletting the two units in the basement to foster children, without disclosing this information to the landlord. The landlord was only required to move one of the two stoves out of the basement. It was the tenants who wanted out of the tenancy agreement once they could no longer charge \$1000 per subtenant.

Landlord's Claim

The landlord claimed the following items:

- 1) \$112 for carpet material and \$175 for carpet installation – there was a burn hole in the carpet that could not be cleaned;
- 2) \$120 for door repair – a bi-fold closet door was broken and required repair;
- 3) \$150.08 for re-keying the locks – the tenants told the landlord that they had returned all of the keys, but the subtenants later let themselves into the rental unit with keys, so the landlord had to have the locks changed;
- 4) \$800 for 40 hours of housecleaning and power-washing – the tenants left the rental unit dirty, and extensive cleaning was required;
- 5) \$400 for preparation time for the dispute resolution process; and
- 6) \$11.17 for mail forwarding costs.

In support of her application, the landlord submitted the condition inspection report, invoices and photographs of the condition of the rental unit at the beginning and end of the tenancy. The photographs mostly depicted very small areas that required cleaning or dusting. However, the photographs of the outside concrete clearly show that it would have required power washing.

The tenants' response to the landlord's application was as follows. The landlord's receipt for the carpet replacement is \$287, yet the landlord withheld \$450 of the tenants' security deposit for carpet replacement. The tenants do not, however, dispute that there was damage to the carpet. The tenants deny that the closet door was broken at move-out. The tenants were aware that there was dust in the unit, but they feel it is absurd for the landlord to charge \$800 for dusting. The tenants offered to power-wash the outside concrete if the landlord brought over her power washer, but the landlord did not do so. The landlord's sister, a co-owner of the rental unit, did all of the cleaning.

Analysis

Tenants' Claim

The landlord clearly did not have the tenants' authorization to withhold \$650 of the security deposit, and the landlord did not apply within the required deadline to keep any of the security deposit. I therefore find that the tenants are entitled to double recovery of the \$650 balance of their security deposit, in the amount of \$1300.

In regard to the alarm system, I find that the tenants cannot hold the landlord responsible for the contract that the tenants chose to enter into, and therefore they are not entitled to any compensation for this portion of their claim.

In regard to costs associated with moving, I find that the tenants chose to rent the entire house, and they also chose to end the tenancy. The tenants are therefore not entitled to any portion of their claim for their moving costs. It is not the fault of the landlord that the tenants chose to pay most of their rent by subletting. The tenants could have applied for a reduction in rent for removal of the stove or any other service or facility that the landlord was required to remove.

The only cost associated with the dispute resolution process that is normally recoverable is the filing fee for the cost of the application. I find that in this case the tenants did not provide sufficient evidence to support this portion of their claim. I will address the filing fees below.

Landlord's Claim

I find that the landlord is entitled to \$287 for the damaged carpet, as the tenants acknowledged this damage. I find that the landlord is also entitled to \$150.08 for the cost of re-keying the locks, as the tenants clearly did not return all of the keys when the subtenants still had at least one key, and it was reasonable for the landlord to then change the locks.

The landlord's photographs are mostly inconclusive regarding any cleaning that was required. I find that the landlord's claim of \$800 for cleaning is not reasonable. Further, the landlord did not provide a breakdown of how much time was required for cleaning specific areas or items. I find that the landlord would have needed to power-wash the outside concrete, and I do not accept the tenants' argument that they should not be responsible for this cleaning because the landlord would not lend them her power-washer. I therefore find it reasonable to grant the landlord \$40 for two hours of power-washing.

As with the tenants' claim for compensation for preparation time for the hearing, I find that in this case the landlord did not provide sufficient evidence to support this portion of her claim.

Filing Fees

As neither the tenants nor the landlord was wholly successful in their claim, I find neither party is entitled to recovery of the filing fee for the cost of their application.

Conclusion

The tenants are entitled to \$1300. The landlord is entitled to \$477.08 I grant the tenants an order under section 67 for the balance due of \$822.92. This order may be filed in the Small Claims Court and enforced 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: June 20, 2013