



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the tenants for the cost of the application. The details portion of the landlords' application refers to repairs. The tenants have 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.

Both landlords and one of the tenants attended the conference call hearing and the tenant and one of the landlords gave affirmed testimony. The parties also provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit or pet damage deposit?

Background and Evidence

The tenant testified that this fixed term tenancy began on November 1, 2008 and expired after one year, and then reverted to a month-to-month tenancy. The tenant testified that it ended on January 31, 2013 however the tenants moved out of the rental unit on February 1, 2013. Rent in the amount of \$1,300.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. Prior to the commencement of the tenancy, the landlords collected a security deposit in the amount of \$650.00, and no pet damage deposit was collected.

The tenant further testified that the parties met inside the rental unit on February 11, 2013 after the tenants had moved out, at which time the landlord gave the tenant a cheque for \$650.00 for return of the security deposit, and later called the tenant stating that the landlord would be cancelling the cheque, and the cheque was dishonoured by the bank. When the parties met inside the rental unit, nothing was mentioned about concerns the landlords may have had, and no move-in or move-out condition inspection reports were completed.

The tenant also testified that leaking was a problem in the rental unit when the tenants moved in, but the landlords had hired a renovator and renovations had not yet been completed. The contractor attended a few times to do repairs, but stains on the ceiling were evident when the tenants moved in, and the contractor fixed ceiling holes during the tenancy. The tenants didn't contact the landlords about it because the contractor told the tenants that he had fixed the problem. Once noticed, the tenants contacted the landlords. The tenants had noticed leaks in the kitchen, not in the bathroom, and the tenant thought mould in the bathroom was caused by the fan not working properly, and the tenants cleaned it up. After another contractor arrived, the leak in the kitchen was fixed, and the contractor called a plumber. The contractor cleaned and re-painted in the bathroom. The tenant also provided a copy of an email from the tenant to the landlord dated October 18, 2010 reporting the leak in the kitchen near the location that the contractor had previously fixed.

The tenant provided a forwarding address in writing on February 14, 2013 by email, and the landlord responded to that email by leaving a message on the tenant's phone a few days later. A copy of the tenant's email was provided for this hearing. After the tenant filed the application for dispute resolution, the landlord returned the \$650.00 security deposit to the tenant. The documentation shows that the tenant filed the application for dispute resolution on March 6, 2013, and the tenant testified that the security deposit was returned on April 15, 2013. The tenant claims double the amount of the security

deposit plus interest at 1.5%, less the \$650.00 received from the landlords, in addition to recovery of the \$50.00 filing fee for the cost of this application.

The landlord testified that the tenants were asked many times during the tenancy, but never told the landlord of any issues. Then in October, 2010 the tenant called the landlord about a leak in the kitchen. The landlord hired a contractor who said that he wasn't able to get ahold of the tenant. The landlords were on vacation at the time and upon returning, the landlord called the tenant. The landlords have also provided a copy of a letter from the contractor stating that the work was done on Saturday mornings which was the only access allowed by the tenant, and many Saturdays were not convenient for the tenant. On two occasions the tenant was not home at the scheduled time. The letter also states that, "The tenant seemed indifferent to the severity of damage these leaks have caused."

The landlord further testified that a flood had occurred in the landlord's home and the landlords' computer was affected. Therefore, the landlord did not receive the tenant's email requesting the security deposit.

The landlord also testified that as a result of the tenant's failure to notify the landlords of the damage caused by the leaks, the landlord has incurred costs amounting to \$2,324.00 which the landlord claims from the tenant in addition to the \$50.00 filing fee for the cost of the application. An invoice for that amount dated February 26, 2013 has been provided which contains the address of the rental unit and separates bathroom repairs from miscellaneous repairs. The bathroom repairs include the plumber cost of \$375.00 for replacing the bathroom tap and leaking shower line, as well as replacing 2 sections of drywall in the kitchen, a section behind the bathroom tap, painting, bleaching bathroom walls and ceilings to remove mildew, remove stipple from the bathroom ceiling, for a cost of \$1,475.00 for labour and materials. The miscellaneous repairs include installing a new bathroom vanity light to replace the mould damaged fixture, installing a bedroom door and casing, painting door jambs and staining areas of the main floor hardwood where required, for a cost of \$800.00 for labour and materials. The total labour and materials is listed at \$2,075.00, plus HST in the amount of \$249.00, for a total of \$2,324.00.

The landlords have also provided numerous photocopies of photographs which show only as black marks and are not legible or visible and provide no evidence of damage.

Analysis

Firstly, with respect to the tenant's application, the *Residential Tenancy Act* requires a landlord to return a security deposit in full to a tenant 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, or the landlord must be ordered to re-pay the tenant double the amount of the security deposit. In this case, the tenant testified that the forwarding address was provided to the landlord by email, however the landlord testified that it was not received because of a flood in the landlord's home which affected the use of the computer. In order to make an order as against the landlords for double the amount of the security deposit, the onus is on the tenant to establish when the landlords received the tenant's forwarding address in writing. In the circumstances, I am not satisfied that the tenant has established when or if the landlords received the tenant's forwarding address in writing. The landlords have returned the security deposit to the tenant. With respect to interest, the regulations specify the interest payable on deposits, and I've calculated the interest payable at \$1.62.

With respect to the landlords' application for damages, in order to be successful, the onus is on the landlords to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlords made to mitigate, or reduce such damage or loss.

I have reviewed the invoice provided by the landlords and I find that the landlords have failed to establish the condition of the rental unit at the outset of the tenancy. The *Act* requires a landlord to complete a move-in and a move-out condition inspection report and to provide a copy of them to the tenant. The regulations also state that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In the absence of any reports, I find that the landlords have failed to establish that a new bedroom door, casing and privacy lock were not required at the beginning the tenancy. The same applies for painting the door and door jams and staining areas of the main floor hardwood. That portion of the landlord's invoice amounts to \$600.00, and I find that the landlords have failed to satisfy element 2 in the test for damages.

With respect to a plumber replacing the bathroom tap and leaking shower line, again I fail to see how the tenant is responsible for such leaks. I find that the landlords have failed to establish element 2 in the test for damages.

With respect to the remainder of the invoice, I accept the testimony of both parties. The tenant believed that the contractor had fixed the areas affected, but mould still appeared

in the bathroom. The landlord testified that the rental unit was visited by the landlord on several occasions; the tenant was asked about required repairs but did not report any despite the recurring mould. I find that the landlords have established a monetary claim as against the tenant for the balance of the invoice, being \$1,100.00, which I set off from the \$1.62 interest on the security deposit owed to the tenant

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee from the other.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,098.38.

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: June 18, 2013

Residential Tenancy Branch