



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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 by one of the landlords; their agent and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for damage to the rental unit; 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; compensation for monies owed under the tenancy agreement and to recover the filing fee from the landlord 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 May 1, 2007 as a month to month tenancy for the monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid. The parties agree the tenants were responsible for 50% of the utility costs for the residential property and the landlord usually reimbursed the tenants for this amount, as the bill was in the tenant's named. They also agree the tenancy ended on March 31, 2013.

The tenants submit they provided their forwarding address to the landlord on April 10, 2013 and that the landlord returned \$149.00 of the \$450.00 security deposit by way of a cheque dated April 11, 2013.

The tenants also submit the landlord failed to reimburse them for the utilities in the amount of \$232.00. The landlord submits he determined that the tenants might have a “grow-op” in one of the bedrooms because the tenants would not let the landlord into that room when he did an inspection. He believes that as a result the tenants’ utility charges were inflated and he deducted \$2.00 per day and the cost of repairs to a window in the amount of \$92.57 from the amount owed for the utilities.

The landlord seeks compensation for damage and cleaning of the rental property in the amount of \$561.00. The landlord specifically seeks \$138.50 for junk removal; \$112.50 for oil removal; \$100.00 for the cleaning of a stove; \$210.00 for replacement of a damaged door.

The tenants submit the landlord did not complete a move in or move out condition inspection. The only evidence provided as to the condition of the rental unit was 4 photographs. One photograph showed damage to a hollow core door from the unit; two photographs of the area of the kitchen where the stove was and one photograph of the outside of the stove.

The landlord provided receipts for landfill charges in the amount of \$26.00; cleaning of the stove for \$100.00; and supply and installation the door in the amount of \$210.00.

Analysis

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.

As the tenants dispute the landlord’s claim and the landlord has provided no evidence of the condition of the rental unit at the start of the tenancy, in particular any damages to the door, I find the landlord has failed to establish the door was damaged as a result of the tenancy. I therefore dismiss this portion of the landlord’s claim.

As the tenants dispute the landlord’s claim and the landlord has provided no evidence of the condition of the rental unit, with the exception of the photographs noted above, I find the landlord has failed to provide any evidence that the tenants had left “junk” or oil on

the residential property at the end of the tenancy. I therefore dismiss this portion of the landlord's claim.

As to the landlord's claim for cleaning of the stove I find the landlord has established, by way of his photograph evidence that the stove required substantial cleaning and that this cleaning has cost the landlord \$100.00 as per the receipt submitted. I find the landlord is entitled to the \$100.00 claimed.

As to the utilities claimed by the tenants as owed to them by the landlord. Despite the landlord's assertion that the tenant caused damage to the window the payment of utilities is a separate matter and if the landlord had wanted to be reimbursed for such a repair he should have requested this from the tenants. If they agreed to the amount being deducted from the utilities the landlord could have then deducted the amount. However as the landlord did not even discuss this with the tenants, I find he cannot unilaterally deduct this amount from the amount owed to the tenants.

Likewise, despite the landlord's suspicions that the tenants had a "grow-op" in the second bedroom thus increasing the amount for utilities the landlord could not just unilaterally decide to deduct the amount from the amount owed. Further, the landlord has provided no evidence, other than his suspicions, that the tenants had in fact had a "grow-op". Therefore I find the landlord cannot deduct any amount from the tenant's reimbursement of utilities.

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.

I accept the undisputed testimony that the tenants provided the landlord with their forwarding address in writing on April 10, 2013. Allowing for 5 days to be delivered through the mail, I find the landlord had until April 30, 2013 to either return the deposit in full to the tenants or file an Application for Dispute Resolution seeking to claim against the deposit.

While the landlord returned \$149.00 of the deposit to the tenants on April 11, 2013, he filed his Application on June 26, 2013. As such, I find the landlord failed to comply with the requirements under Section 38(1) and the tenants are entitled to double the amount of the deposit.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$944.35** comprised of \$900.00 double the amount of the security deposit; \$11.35 interest on the original deposit amount; \$232.00 for utility charges; and the \$50.00 fee paid by the tenants for this application; less the \$149.00 of security deposit returned;.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: August 19, 2013

Residential Tenancy Branch