



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MND, MNR, MNSD, MNDC, FF

For the tenants – MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. At the outset of the hearing the landlord stated that there is no rent or utilities outstanding and the landlord withdraws their application for a Monetary Order for unpaid rent.

The tenants applied for a Monetary Order for the return of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order to recover the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on December 01, 2010 for a fixed term of a year and then reverted to a month to month tenancy. Rent for this unit was \$1,600.00 per month and was due on the 1st day of each month. The tenants paid a security deposit of \$800.00 on November 10, 2010. The tenants attended a move in inspection with the landlord's agent. The tenancy ended on June 01, 2013 and the landlord failed to do a move out condition inspection report. The tenants provided a forwarding address in writing on June 02, 2013.

The landlord application

The landlord testifies that the tenants moved into a new unit but after the three years of their tenancy the tenants did not clean the carpets in the apartment. The new incoming tenants complained that the carpets were dirty and the landlord agreed to reimburse the new tenants for carpet cleaning of \$180.00. The landlord has provided a receipt in evidence.

The landlord testifies that the tenants hung pictures on the walls in the unit. At the end of the tenancy the landlord found over 30 picture hook holes which had to be repaired.

The walls were also left scratched in places with dark scratches. The landlord testifies that he paid \$750.00 for this work to repair the walls.

The landlord testifies that the tenants are required to pay a move out fee of \$100.00. The landlord had to pay \$200.00 to the Strata for this fee and in a year's time the Strata will return \$100.00 to the landlord. The landlord testifies that the tenants signed the Strata "K" form which stated that they had received the Strata rules. The landlord seeks to recover \$100.00 from the tenants and has provided a copy of the receipt from the Strata.

The landlord seeks an Order to be permitted to keep the security deposit and to recover the \$50.00 filing fee from the tenants.

The tenants agree that they did not clean the carpets at the end of the tenancy but testify that they did vacuum them. The tenants testify that they kept trying to set up a time with the landlords representative to have the carpets cleaned but when that person looked around the unit at the end of the tenancy he said the unit was clean and the full security deposit would be returned in full to the tenants.

The tenant testifies that they did sign the Strata "K" form but did not get the Strata rules. The tenants do not dispute the \$100.00 fee for moving from the unit. The tenants testify that they did hang some pictures on the walls and have provided photographic evidence showing the amount of pictures hung and the type of picture hooks used were one inch long. The tenants testify that the walls were left in a good condition.

The tenants' application

The tenants seek to recover double the security deposit as the landlord did not do the move out inspection report with the tenants and have extinguished their right to file a claim to keep the security deposit. As the landlord did not return the security deposit within 15 days the tenants seek to recover double the security deposit to an amount of \$1,600.00.

The tenants also seek to recover their filing fee of \$50.00.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damage to the walls in the unit due to some scratches and picture hook holes; I refer the parties to the Residential Tenancy Policy Guidelines #1 which states in part, that most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

The landlord has provided no evidence to show that the tenants were given guidance at the start of the tenancy regarding what type of picture hook to use and therefore I cannot deem that the tenants are responsible for filling these holes left by their picture hooks. Furthermore the landlord has provided no evidence to show that the walls were left scratched at the end of the tenancy and consequently the landlords claim for \$758.00 to repair the walls is dismissed.

With regard to the landlords claim for carpet cleaning; I again refer the parties to the Residential Tenancy Policy Guidelines #1 which states in part, that 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.

The tenants agree that they did not steam clean or shampoo the carpets at the end of the tenancy and therefore I find the landlord has established a claim for carpet cleaning of **\$180.00**.

With regard to the landlords claim for a move out fee charged by the Strata, This is a common fee charged by Strata's in a building. The tenant did sign the "K" form agreeing to the rules of the Strata and although the tenants have testified that they did not receive these Strata rules which would document fees of this nature, the tenants should not have signed a document without reading it first. The tenants do however agree that this fee is reasonable and agree to pay **\$100.00** from the security deposit.

With regard to the tenants application for double the security deposit; I refer the parties to section 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on June 02, 2013. As a result, the landlord had until June 17, 2013 to return the tenants security deposit. I find the landlord did not return the security deposit and the landlord has extinguished their right to file a claim against the deposit as the landlord failed to complete a move out condition inspection of the property with the tenants in accordance with s. 36(2) of the *Act*. Therefore, I find that the tenants have established a claim for the return of double the security deposit to an amount of \$1,600.00 pursuant to section 38(6)(b) of the *Act*.

As the as the parties have both been partially successful with their claim; I find that the parties claims to recover the filing fee of \$50.00 will be offset against each other. No filing fees will therefore be awarded to either party.

I have offset the landlord's monetary claim against that of the tenants. The tenants will receive a Monetary Order pursuant to s. 38(6)(b) of the *Act* as follows:

Double security deposit	\$1,600.00
Less carpet cleaning	(-\$180.00)
Less Strata moving out fee	(-\$100.00)
Total amount due to the tenants	\$1,320.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to recover the amount of **\$280.00** from the tenants and is permitted to keep this from the security deposit. The remainder of the landlords claim is dismissed without leave to reapply.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,320.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: September 24, 2013

Residential Tenancy Branch