



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MND, MNSD, FF, O

For the tenants – MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the tenants' security and pet deposit; other issues; and to recover the filing fee from the tenants for the cost of this application. The tenants applied to recover double the security and pet deposit and to recover the filing fee from the landlords for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants 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

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep the security and pet deposit?

- Are the tenants entitled to recover double the security and pet deposit?

Background and Evidence

The parties agree that this tenancy started on September 01, 2012 for a fixed term tenancy which was due to end on August 31, 2013. The tenancy ended on June 29, 2013. Rent for this unit was \$2,300.00 per month and was due on the 1st of each month. The tenants paid a security deposit of \$1,150.00 on August 01, 2013 and a pet deposit of \$1,150.00 on January 10, 2013. Both parties attended an inspection of the rental unit at the start and end of the tenancy and the tenants provided a forwarding address in writing on June 29, 2013.

The landlords LF gives verbal testimony for the landlords and testifies that they had arranged to do the move out inspection with the tenants at 1.00 p.m. on June 29, 2013. The tenants later called and asked if 3.00 p.m. would be alright. The landlord testifies they agreed to this but asked the tenants to give the landlord a call prior to 3.00 pm. as the landlords were an hour away. The landlord testifies that the tenant called at 3.00 p.m. and asked where the landlords were. The landlords arrived at the unit at 4.30 p.m. and the tenants were packed up and ready to go. The tenants had shampooed the carpets but they were still wet so the whole inspection was very rushed as the tenants wanted to get off to meet their ferry. The landlord testifies that as the carpets were still wet they could not go into each room to do a thorough inspection. They filed in the move out report and noted that everything was all the same as at move in. However after the tenants' left the landlords found a two foot diameter bleach mark on the living room carpet which had been partially hidden by the tenants' carpet cleaning machine. The landlords called the tenants but they disputed the mark.

The landlord called in two carpet companies who both said the mark had taken the dye out of the fibers and could not be removed. The landlords seek to recover the cost for replacement carpet in the living and dining rooms due to this damage. The landlord

testifies that the carpet is approximately 15 years old but was in a reasonable condition at the start of the tenancy with just one small mark which was noted on the move in inspection report. The landlords have provided a quote for replacement costs of \$2,139.08. The landlords have provided photos of this damage.

The landlord testifies that during the inspection everything looked reasonable. However once the carpets dried the landlords were able to do a closer inspection and they found a wall was damaged behind a bedroom door in the basement. This appeared to have been damaged by the door knob going through the wall. The screen on the exterior door was also torn. The landlord seeks to recover the costs to repair this damage of \$32.46 and receipts for materials have been provided in evidence. The landlords have also provided photos of this damage in evidence.

The landlord testifies that once they could go into the rooms they also found areas which had not been cleaned by the tenants. The area of floor in front of the dishwasher was dirty, the door tracks were dirty, the baseboards and door frames were dirty, there was dog hair in the corners of the carpets, the fan was not cleaned and the ceiling fan blades were extremely dusty. The tenants were responsible for yard maintenance however the weeds had not been pulled out and there was a quantity of dog feces and cigarette butts in the yard.

The landlord testifies that both landlords had to clean the interior of the house and had to clean up the dog feces and cigarette butts and pull out the weeds. The landlords spent a total of 22 hours each doing this work and seek 20.00 an hour per person to a total amount of \$880.00.

The landlords therefore request an Order to keep the security and pet deposit in partial satisfaction of their claim.

The tenants dispute the landlords' claim. The tenant LM provides testimony for the tenants and testifies that there was no bleach used on the carpets. The carpets were

old and a neighbour had told the tenants that the carpets were the original ones put in when the house was built 15 to 20 years ago. The tenant testifies that their carpet cleaner uses a shampoo solution and hot water and no bleach was used to clean the carpets.

The tenant disputes the landlords' claim concerning the hole in the wall. The tenant testifies that they never used this downstairs bedroom and the hole was there when they moved in. However, the landlords had not seen it to document on the inspection report as the door was open and the hole was behind the door.

The tenant disputes the landlords' claim that they damaged the screen. The tenant testifies that this was also damaged when they moved in and two weeks before they moved out they notified the landlord of the tear in the screen.

The tenants dispute the landlords' claim for cleaning. The tenant testifies that when they moved into the unit the previous tenants had not cleaned the unit and they paid the tenant \$100.00 to clean the unit. The tenant testifies that her sister helped her clean and it was so bad it took them five days to clean before they could even unpack their belongings. This included cleaning the yard. The tenant testifies that if she got \$100.00 to clean the entire house and yard how can the landlords charge over \$800.00 for doing less cleaning. The tenant agrees that she may have missed the floor in front of the dishwasher and the ceiling fan in the bedroom. The tenant disputes that there was a large amount of dog feces in the yard as her husband had picked it when before they moved out. The tenant does not dispute the cigarette butts.

The landlord cross exams the tenant and asks why the tenant left the carpet cleaner in the middle of the carpet in the living room. The tenant responds that they were trying to figure out where to put it on the truck. The landlord asks the tenant that if they had cleaned the windows why was the track dirty. The tenant responds that every window was cleaned.

The tenant cross examines the landlord and ask why the tenants were only paid \$100.00 to clean the unit at the start of the tenancy if the landlords now want \$800.00. The landlord responds that the tenants were paid \$100.00 to just clean behind the appliances as the rest of the unit was clean. The landlord refers to the move in inspection report to support this.

The tenants' dispute the landlords claim to keep the security and pet deposits. The tenant testifies that they did not get a copy of the landlords' application in the required time frame.

The landlord refers to the tenants witness letters proved in evidence. The landlord testifies that there are untrue statements in these letters as they state that her sister and father were present during the inspection however the tenant's father was sitting outside in the truck and the tenants sister did not arrive until after the inspection was completed. The landlord also disputes that the screen door was damaged at move in or it would have been documented on the move in report as this was done in great detail.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for replacement carpets; I agree that the mark on the living room carpet does appear to be some sort of bleach mark. However, in considering the landlords claim I must apply the useful life table for items. The Residential Tenancy Policy Guidelines # 40 has a list of the useful life of items in a home and states that the useful life of a carpet is 10 years. Consequently, as the carpet was 15 or 20 years old I find the landlords' application for replacement costs cannot be considered and is dismissed.

With regard to the landlords claim for damage; the purpose of doing a move in and move out inspection report is to provide some evidence of the condition of the unit at the start and end of the tenancy to deduce what damages, if any, were caused during the

tenancy. The tenants argue that the hole in the wall and the screen damage was present at the start of the tenancy however the tenants did not notify the landlords of this at the time, in order for the move in report to be amended. I therefore find it likely that this damage was caused during the tenancy and I uphold the landlords claim for **\$32.46**.

With regard to the landlords' claim for cleaning; I have considered both arguments in this matter and find the landlords' evidence is more compelling concerning the additional cleaning required to the tracks, baseboards, door frames, fan and floor by the dishwasher. I also find the landlords' evidence more compelling concerning the amount of dog feces left in the yard, the cigarette butts and the weeds. However the landlord has not provided sufficient evidence to show that there was additional cleaning above and beyond this that would take two people 22 hours each to remedy. I find the amount of cleaning the landlord has proven would not take two people 22 hours each to manage and therefore I must limit the landlords claim to **\$300.00**.

I order the landlords to keep part of the tenant's security and pet deposit of \$2,300.00 to offset against the landlords' monetary award of **\$332.46**.

The tenants have applied for double the security and pet deposit. The tenants argue that the landlords did not return the deposits or file to keep them within the allowable time frame. I refer the parties to s. 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 and pet 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 and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address in writing on June 29, 2013 and the tenancy ended on that date. As a result, the landlords had until July 14, 2013 to return the tenants security and pet deposit or apply for Dispute Resolution to make a claim against it. I find the landlords filed an application for Dispute Resolution to keep the deposit on July 11, 2013. Therefore, I find that the tenants are not entitled to recover double the security and pet deposit as the landlord did apply to keep it within 15 days. However, the tenants are entitled to recover the balance of the security and pet deposit and therefore the amount of **\$1,967.54** must be returned to the tenants pursuant to s. 38(6)(b) of the *Act*.

As both parties have been partially successful with their claim I find that both parties must bear the cost of filing their own applications.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. The landlords may retain the amount of **\$332.46** from the tenants' security and pet deposits.

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 **\$1,967.54**. The order must be served on the landlords 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: October 24, 2013

Residential Tenancy Branch

