



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for: a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (referred to as the Act), regulation or tenancy agreement; to keep all or part of the pet damage or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord and tenants appeared for the hearing and no issues in relation to the service of documents under the Act were raised by any of the parties.

The landlord's monetary claim of \$2,110.00 against the tenants was heard in two parts during this hearing. The first part of the landlord's claim was in relation to a broken window at a cost of \$541.00. The second part of the landlord's claim was in relation to cleaning, painting and repair costs sought from the tenants in the amount of \$1,540.00. The landlord also claimed \$30.00 in administration costs in preparation for this hearing, however in relation to the administration costs, I dismiss this portion of the landlord's claim as the landlord must bear the cost in bringing an application against the tenants.

During the second part of the hearing, the landlord and tenant reached an agreement in regards to the landlord's claim for damages to the unit. Pursuant to section 63 of the Act, the Arbitrator may record the settlement in the form of a decision or an order. As a result, the tenant consented to the landlord deducting a total of \$100.00 from the tenants' security deposit in full satisfaction of this portion of the landlord's claim.

In relation to the landlord's claim of the broken window in the amount of \$541.00 the landlord and tenants provided affirmed testimony and documentary evidence in advance of the hearing. Only evidence relating to this matter has been documented and considered in the resulting decision.

Issue(s) to be Decided

- Is the landlord entitled to deduct \$541.00 from the tenant's deposits for the cost of a broken window?

Background and Evidence

Both parties agreed that the tenancy started on September 1, 2012 for a fixed term of one year which ultimately ended with a mutual agreement to end the tenancy on August 4, 2013. A written tenancy agreement was completed along with a move-in and move-out condition inspection report, all of which were provided as evidence for this hearing. Rent was payable by the tenant in the amount of \$2,150.00 on the first of every month. The tenant paid the landlord a security deposit in the amount of \$1,075.00 and a pet damage deposit in the amount of \$900.00 on July 22, 2013, which the landlord still retains. The tenants provided the landlord their forwarding address on the move-out condition inspection report on August 4, 2013.

The landlord testified that the move-out condition inspection took 90 minutes to complete and was very stressful as it involved a number of disagreements between the landlord and tenants about the condition of the rental unit. The landlord testified that during the move-out condition inspection she failed to notice that the master bedroom window had been broken by the tenants. The landlord took several photographs of the damage and provided these as evidence. The photos show a large crack in the glass starting from the bottom left of the window and traversing its way in a curve diagonally towards the top left corner.

The landlord testified that she texted and e-mailed the tenants on the same day, informing them of the damage and provided this e-mail as evidence. However, the e-mail is dated August 5, 2013 which the landlord stated was an error and re-iterated the fact that she addressed this immediately with the tenants. However, the landlord testified that the tenants did not respond to the e-mail and as a result she made her application to keep the deposits on August 12, 2013. The landlord got the window replaced at a cost of \$541.00 and provided an invoice as evidence for this hearing. The landlord now claims this amount from the tenant's deposits.

In support of her claim, the landlord provided a witness statement of a person who was in attendance with the landlord at the time of the move-out condition inspection. In the statement the witness testifies that he observed the damage to the window pane which was noticed by him and the landlord after the tenant's had left following the move-out inspection. The landlord also produced another witness statement from a repairman who writes that one of the east exposure windows had a large crack line which

appeared to be caused from being hit by something from the inside the unit. The landlord also provided a statement from the new incoming renter who states that when she took up occupancy on August 4, 2013, there was crack in the master bedroom window.

The tenant denied causing any damage to the window and testified that they did not know how and when this occurred. As a result of the tenants' efforts to determine the cause of this, the tenants submitted the landlord's photographs to two window experts by e-mail. The e-mails and responses were provided as evidence. In the first e-mail which had been sent to the same company who had made the repair for the landlord, the company representative responds to the photograph of the window saying "Looks like a pressure crack." The second company e-mail response states that "If the cracks are emanating from the edge inside the frame, there was an original chip or damage at the glass edge that finally decided to fail. Was there an unusual temperature change or stark shading?" The tenant responded by saying that it is a south-east facing window and that they were unsure of when this happened as they had blinds down in the window.

The landlord asked the tenants, if the damage had not been caused by them then why was the damage not brought to the attention of the landlord during the tenancy and why did they ignore her e-mail about this after the move-out inspection. The tenants responded by stating that they always had their blinds down so they did not notice the crack in the window and did not respond to the landlord's e-mail as it did not ask for a response but threatened that there would be consequences.

Analysis

The tenants provided the landlord with a forwarding address in writing and as a result, I find that the landlord made the application to keep the tenant's security deposit within the allowed time limits stipulated by the Act.

In making a decision in this matter, I have excluded the condition inspection report as the damage in question to the window was not documented by the landlord or tenant on the reports. However, the landlord has provided sufficient evidence to show that the damage was not caused by anyone else after the tenants had vacated the rental suite.

When a landlord makes a claim for damages to a rental suite, the landlord bears the burden of proof on the balance of probabilities to prove their claim. In this case, the question to be determined is whether the tenants caused the damage to the window. The tenants consulted two window experts both of whom suggested that the damage is likely to be caused by thermal or pressure cracks based on the fact that the crack

emanated from the side of the window. This is consistent with the evidence that the unit was south-east facing and that the tenant's had their blinds continually closed during which time it is likely the crack occurred. The landlord testified that during the inspection of the bedrooms, the crack in the window was not noticed by her as she was too busy with the stress of conducting the inspection and completing the report even though the blinds were open. Based on this, I also find that the tenants by the same token could have not seen the damage to the window as well.

As the tenants have provided a plausible explanation different to that of the landlord's, I find that the landlord has not met the burden of proof in proving the tenants caused the damage to the window. As a result, I dismiss this portion of the landlord's claim. As the landlord has been unsuccessful in proving her claim, I find that the landlord is not entitled to the filing fee from the tenants for the cost of this application.

Conclusion

For the reasons set out above, I order the landlord to deduct a total amount of \$100.00 from the tenants' deposits.

In addition, I grant the tenants a monetary order pursuant to Section 67 of the Act in the amount of **\$1,875.00**. This order must be served on the landlord if the landlord fails to make this payment and may then be filed in the Provincial Court (Small Claims) 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: November 20, 2013

Residential Tenancy Branch