



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 dealt with applications by the landlord and the tenants. The landlord applied for monetary compensation as well as an order to retain the pet and security deposits in partial compensation of her monetary claim. The tenants applied for double recovery of the pet and security deposits and further monetary compensation. The landlord and both tenants participated in the teleconference hearing.

The hearing first convened on September 30, 2013. On that date, the landlord requested an adjournment on the basis that the tenants had served their evidence late, and she wished to have further time to review and respond to the tenants' evidence. I determined it was appropriate to grant the adjournment on that basis, and did so.

The hearing reconvened on November 15, 2013. On that date, each party confirmed that they had received the other party's evidence. The landlord stated that she wished to rely solely on her documentary and photographic evidence as evidence of her claim, as well as her response to the tenants' claim. The tenants gave some testimony, particularly regarding their response to the landlord's claim, but also wished to rely on their documentary and photographic evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Did either party extinguish their right to claim the security and pet deposits?
Is the landlord entitled to monetary compensation as claimed?
Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on April 1, 2012. The landlord and the tenants conducted a move-in inspection and completed a condition inspection report on March 29, 2012. At the outset of the tenancy, the tenants paid the landlord a security deposit of \$850 and a pet deposit of \$100. The tenancy ended on May 31, 2013.

Move-Out Inspection and Deposits

The landlord and the tenants made extensive submissions regarding the move-out inspection and its potential impact on the other party's monetary claims.

The landlord submitted that on May 3, 2013, the tenants asked to move their move-out inspection from May 31, 2013 to June 1, 2013. The landlord agreed to reschedule but then realized she had a scheduling conflict. The landlord stated that she then offered June 2, 2013, and the tenants rejected that date but offered June 3, 2013. The landlord and the tenants began the move-out inspection on June 3, 2013, but the male tenant became unreasonable, aggressive and intimidating, and the landlord asked the tenants to leave the property. The inspection was not completed, as the back yard, north side yard, front yard and porch had not yet been inspected. The landlord submitted that she attempted to contact the tenants to complete the inspection, but they indicated that they felt the inspection was complete. The landlord submitted evidence that the tenants emailed the landlord on June 3, 2013, asking the landlord to just fill it in herself and send it to them. On June 5, 2013 the landlord served the tenants with a Notice of Final Opportunity to Schedule a Move-In Inspection, which scheduled an inspection on the next day, June 6, 2013, at 6:00 p.m. The notice contains a hand-written note as follows: "cited 1300 hrs 05/June/13 [initials of landlord's agent]." The landlord submitted that she waited for an hour on June 6, 2013, but the tenants did not appear. On June 20, 2013 the landlord filed her application to keep the security and pet deposits.

The tenants submitted that the move-out inspection was scheduled for June 1, 2013, but the landlord said she was not available on that date because of work. The tenants offered June 2, 2013, but the landlord refused that date. The landlord and tenants met at the rental property on June 3, 2013 to do the inspection. The tenants denied that the male tenant became verbally abusive. They submitted that the landlord became agitated during the inspection and asked the tenants to leave the property. On June 4, 2013 the tenants served the landlord a letter via registered mail, in which they indicated that as they no longer had possession of the rental property, and the landlord had clearly been entering the unit, another inspection would not be an accurate representation of the condition of the property at move-out. The tenants also provided

their forwarding address in the letter, and requested return of their security and pet deposits. The tenants did not submit evidence of when the landlord received this letter.

Landlord's Claim

The landlord claimed \$2322.63 for the following repairs and cleaning costs:

- 1) \$100.78 for window covering replacement – the landlord submitted that curtains in the living room were soiled, stained and irreplaceably damaged by the tenants' dogs;
- 2) estimated \$140 for chimney cleaning – the tenants were told on the move-in inspection report and again during the tenancy not to use the fireplace, but they used it despite this. The landlord submitted an email quote for the cost to clean the chimney;
- 3) \$114.45 to rekey the locks – the tenants only returned keys to the front door, not the back door, so the landlord had to rekey the back door lock;
- 4) \$814.78 property maintenance – the tenants made extensive changes to the backyard landscaping without the landlord's permission and without restoring the garden to its original condition as required;
- 5) \$1062.62 for cleaning, painting, painting supplies and yard work – the tenants did not properly clean the rental unit or property, and extensive cleaning, painting and yard work was required; and
- 6) \$90 for document service – the landlord hired an agent to personally serve the tenants with dispute resolution documents.

The landlord submitted invoices, other documentary evidence and printed and electronically-stored photographs to support her claim. The printed photographs do not show what date they were taken. Some of the electronically-stored photographs are undated, and some are dated April or May 2013, prior to the move-out inspection of June 3, 2013, or in mid to late June 2013, one or more weeks after the tenants had surrendered possession of the unit.

The tenants' response to the landlord's claim was as follows.

- 1) Window covering replacement – the tenants submitted that the landlord's photos of the curtains do not depict the curtains as they appeared at the end of the tenancy, and they show no irreparable damage. The photographs of the blinds do not clearly show when or where they were taken.

- 2) Chimney cleaning – the tenants stated that they never used the fireplace, and they believed the landlord’s photographs of the fireplace were staged to create false evidence.
- 3) Rekeying back door lock – the tenants stated that they returned all of the keys, and they had mentioned it in their letter of June 4, 2013.
- 4) Property maintenance – the tenants carried out yard work in the spring of 2103, and they obtained the property management company’s permission before doing so. The landlord took over managing the property in June 2012, and after some discussion the landlord told the tenants that the changes in the yard were acceptable.
- 5) Cleaning, painting and yard work – the tenants stated that many of the landlord’s photographs show extreme close-ups that may not even depict the rental unit; further, the photos are not dated. The tenants provided evidence that they cleaned the rental unit on May 31, 2013. The tenants submitted that the landlord must have staged some of the photographs to create false evidence in support of her claim. Further, the invoice for this work is dated August 1, 2013, two months after the tenancy ended.

Tenants’ Claim

The tenants claimed double recovery of the security and deposits, on the basis that the landlord failed to return the deposits within 15 days. The tenants also claimed \$20 for garden tools that the landlord agreed to buy from the tenants in an email dated May 31, 2013.

The landlord did not provide any specific response to the tenants’ claim, aside from addressing the issue of the move-out inspection.

Analysis

Move-Out Inspection and Deposits

I find there is insufficient evidence to determine that either party extinguished their right to claim the pet and security deposits. It appears that the landlord took all steps she believed were necessary for her to comply with the Act regarding the move-out inspection and condition inspection report. However, the landlord did not submit evidence of how the final notice to schedule a move-out inspection was served on the tenants, and the handwritten notation only indicates that the notice was “cited” on June 5, 2013, for an inspection the following day. I therefore cannot find that the tenants were in fact served with the written notice, or whether they received it within a reasonable

time frame before the scheduled inspection. I also find it reasonable for the tenants to have believed that the inspection was done, as they had returned the keys and possession of the unit to the landlord. I place no evidentiary weight, however, on the move-out inspection report that the landlord completed and submitted.

The tenants mailed their letter containing their forwarding address on June 4, 2013, but did not indicate when the landlord in fact received the letter. I therefore find the landlord was deemed served with the forwarding address in writing on June 9, 2013. The landlord made her application to keep the deposits on June 20, 2013, which is within the time frame required under the Act.

Landlord's Claim

- 1) Window covering replacement – I find the landlord did not provide sufficient evidence to establish that the curtains required replacement. The landlord did not indicate the number of blinds that required cleaning, and I therefore cannot determine whether 1.5 hours of cleaning blinds is reasonable.
- 2) Chimney cleaning – the landlord only provided a quote for chimney cleaning, so she did not establish an actual monetary loss. Further, I am not satisfied that the tenants used the fireplace or that they therefore would be required to have the chimney cleaned.
- 3) Rekeying back door lock – I find that the landlord's evidence regarding the back door key is insufficient to determine whether the tenants did return this key.
- 4) Property maintenance – I accept the evidence of the tenants that they had permission from the property management company to alter the back yard, and they received the landlord's okay for the work they did when she took over managing the property.
- 5) Cleaning, painting and yard work – it is not sufficiently clear from the landlord's evidence what cleaning, painting and yard work was done or when it was done, particularly given the invoice date of August 1, 2013 and the photographs without dates or some dates that indicate the photographs were taken one or two months before the end of the tenancy or more than one week after the tenants surrendered possession of the unit.
- 6) Document service – the only cost associated with the dispute resolution process that is normally recoverable is the filing fee for the cost of the application, which I will address below. I do not find there is sufficient evidence in to warrant the landlord's recovery of the cost of serving documents in this instance.

For the reasons set out above, I find that the landlord did not provide sufficiently clear and reliable evidence to establish her claim. The landlord's claim is therefore dismissed.

Tenants' Claim

I find that as the landlord was deemed to have received the tenants' forwarding address in writing on June 9, 2013 and she made her application to keep the deposits on June 20, 2013, the landlord's application was made in time. Therefore, the tenants are not entitled to double recovery of their deposits.

The tenants did not establish that they were entitled to \$20 claimed for garden tools, as the email evidence only shows that the landlord and the tenant discussed the possibility that the landlord would buy the tools. Additionally, such a transaction would not be within the purview of the Residential Tenancy Act. I therefore dismiss this portion of the tenants' claim.

Filing Fees

The landlord's application was not successful, and she is therefore not entitled to recovery of her filing fee.

The tenants' application was only partly successful, so I find they are not entitled to recovery of their filing fee.

Conclusion

The landlord's application is dismissed.

The tenants are entitled to recovery of their security and pet deposits, in the amount of \$950. I grant the tenants a monetary order for this amount. This order may be filed in the Small Claims Court 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: December 15, 2013

Residential Tenancy Branch