



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNDC, MNDC, OLC

Introduction

This hearing dealt with an application by the landlord seeking an order to retain the security deposit. The tenants have filed an application seeking an order for the return of double the security deposit, a monetary order for money owed or compensation for loss or damage suffered under the Act, regulation or tenancy agreement and an order to have the landlord comply with the Act, regulation or tenancy agreement.

Issues to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence and Analysis

The tenancy began on or about February 26, 2012. The parties entered into a fixed term agreement that was set to terminate on August 31, 2013 with both parties agreeing that the tenancy would end and that the tenants would vacate the unit. Rent in the amount of \$1650.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$825.00.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party

making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

As both parties are seeking a monetary order I will address each of the claims and my findings as follows:

Landlords and Tenants Claim for the Security Deposit– The landlord is seeking to retain the \$825.00 security deposit for excessive wear and tear damage to the hardwood floors. The landlord stated that when he inspected the unit at move out he was disappointed to find excessive wear and tear to the hardwood floors. The landlord stated that the unit was completely renovated prior to the tenants moving into the unit. The landlord felt the tenants' use of hard spiked bicycle cleats caused more damage than normal. The landlord submitted three separate quotes that state the amount to replace the hardwood would be from \$2352.00 to \$3655.00.

The landlord stated that he felt he should be entitled to retain the security deposit in full to offset the more than normal wear and tear and submitted that he was being "more than fair". The tenants stated that they adamantly dispute the landlords claim for damage to the hardwood floors. The tenants stated they took great care not to damage the floors and feel the landlord has withheld their deposit without justification and seek double the amount returned. The tenants contacted two of the installers that the landlord had submitted as quotes. The tenants provided the landlords' evidence pictures along with their own to inquire whether the installers felt the damage to the floors was from regular wear and tear or if it was excessive; both installers agreed that the damage appeared to be consistent with normal wear and tear over a 16 month time frame.

The tenants stated that the move in condition inspection report was not completed with them present. The landlord stated that the report was done with the female tenant and nothing was noted as the unit was newly renovated and it didn't have any deficiencies. The tenants acknowledged that the unit was newly renovated. The landlord stated that he gave the female tenant the freedom to write down anything that was a concern to her. Based on all of the above I find that the tenants have sufficiently shown that the

amount of wear and tear was a reasonable amount over a 16 month timeframe. Section 38 of the Act addresses this issue as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36

(1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

The landlord complied with subsection 1 as listed above. I find that the tenants are entitled to the return of their \$825.00 security deposit.

Tenants Claim for Compensation - The tenants stated that the landlord has misrepresented his intentions for the change of use of the unit. The tenants stated that the landlord did not end the tenancy in good faith. The tenants stated that they feel they are entitled to \$1650.00 as per Section 49 of the Act and \$3300.00 as per Section 51 of the Act. The tenants are seeking a total claim of \$6,600.00. The landlord and tenants signed a fixed term agreement with an agreed end date that the tenants must vacate the unit at its conclusion. The landlord stated that out of consideration he felt that he

should inform the tenants that he would not be seeking to renew the fix term beyond August 31, 2013. The landlord informed the tenants of this in mid June 2013. The landlord stated that he informed the tenants that he would be open to having the tenancy end early if the tenants found a suitable place sooner. The landlord stated that the tenants found a place for August 1, 2013 and he agreed to have them move out one month earlier without any penalty.

The landlord did not issue a notice under Section 49 and therefore the tenants are not entitled to the one month's free rent or the compensation under Section 51 of the Act. This portion of the tenants' application is dismissed.

As for the monetary order, I find that the tenants have established a claim for \$825.00. As the tenants have been only partially successful in their application they are entitled to only \$50.00 of their filing fee. I grant the tenant an order under section 67 for the balance due of \$875.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order of \$875.00.

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 07, 2013

Residential Tenancy Branch

