



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord and the tenants. The landlord applied for a Monetary Order for damage to the rental unit and to retain the pet damage and security deposit. The tenants applied for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the Act), regulation or tenancy agreement and for the return of the pet damage and security deposit. Both parties also applied to recover the filing fee for the cost of making their application.

The landlord and one of the tenants appeared for the hearing. The landlord provided the Canada Post tracking numbers as evidence regarding the service of the hearing documents and evidence for this hearing on the tenants by registered mail. The tenant denied receiving the hearing papers and only confirmed receipt of the landlord's evidence to be used for the hearing. Based on the Canada Post tracking numbers provided by the landlord I find that the landlord served the hearing documents to the tenants as required by the Act. The tenant confirmed that he had served the landlord with his hearing documents and evidence by registered mail; the tenant did not provide any evidence for this method of service, however, the landlord confirmed receipt of the hearing documents and the tenants' evidence. Based on this, I find that the tenants served the landlord with the documents as required by the Act.

Both parties provided affirmed testimony during the hearing and documentary evidence in advance of the hearing, all of which has been carefully considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the rental unit?
- Did the landlord extinguish his right to keep the tenants' deposits?
- Is the tenant entitled to double the amount of the deposits?

Background and Evidence

Both parties agreed that the tenancy started sometime before September 1, 2011 for two fixed terms which then eventually continued to a month to month basis. Rent in the amount of \$2,000.00 was payable by the tenants on the first day of each month. The landlord collected a security deposit from the tenants in the amount of \$1,000.00 and a pet damage deposit in the amount of \$1,000.00 both on August 29, 2011. The landlord still retains these deposits. The landlord's agent completed a move-in inspection with the tenants on August 29, 2011 which was provided as evidence for this hearing.

The landlord testified that he agreed with the tenants that the tenancy would end on August 16, 2013. The landlord testified that he completed a 5 minute move-out inspection on the move-out day but confirmed that he had not documented this on a move-out condition inspection report. The landlord testified that during this inspection he had noticed some minor damages but the cost of this would have only amounted to a few dollars and as a result, he told the tenant not to bother with this. The tenants agreed to allow the landlord to deduct \$1,000.00 for the period of time in August, 2013 that the landlord had allowed them to stay in the rental suite.

However, the landlord testified that after the move-out inspection, he inspected the rental unit further and noticed more damages. The landlord testified that he did not have the move-in inspection report, completed by his agent, to hand for comparison which would have allowed him to determine whether the damages he had identified were in existence at the start of the tenancy. The landlord arranged to receive a copy of this from his agent and when he received it three days later, he determined that the tenant should be responsible for the damages he had identified. The landlord then documented these damages on a move-out inspection report and visited the tenant to invite him to sign the report. However, the tenant refused to sign the report.

The landlord testified that the tenants had broken two fridge glass shelves and provided a photograph of the damage to the glass and surrounding bracket as well as two invoices related to the cost of replacing one shelf and one bracket for \$44.98.

The landlord provided photographs of a broken switch plate, missing light bulbs and dryer duct which he claims from the tenants in the amount of \$26.04, as evidenced by a receipt.

The landlord testified that the tenant had left the cupboards sticky and that the shelves inside had to all be cleaned. The landlord provided a photograph of the dirt left behind and underneath the fridge freezer, dirt and dust left within the light fixtures and dirt left inside the fridge. The landlord testified that he and his wife had to clean the rental suite

including the washing of the windows and sills for which it took them 40 hours. The landlord claimed that he charged the tenants \$20.00 per hour for the cleaning. However, the landlord only made a total claim of \$471.04 for damages to the rental suite.

The tenant testified that the move-out inspection was very detailed and it took more than the 5 minutes testified to by the landlord. The tenant testified that the move-out inspection was scheduled from 12:30 pm to 1:00 pm for a total of 30 minutes during which time the landlord had ample opportunity to look for damages. The tenant testified that the landlord made no mention of the damages he testified to during the hearing at the move-out condition inspection.

The tenant stated that he was not aware of any damage to the fridge shelf or the dirt inside the fridge. The tenant testified that they had cleaned the unit thoroughly and left it in a reasonably clean condition. The tenant stated that he had not broken the dryer duct as they were using the dryer until the end of the tenancy.

The tenant admitted to not cleaning underneath the fridge and stated that the broken electrical switch plates were caused by the tenants as well as the broken heat register. The tenant contested the landlord's claim for the cleaning of the unit and that it took so long to clean it.

The tenants provided the landlord with a forwarding address in writing by registered mail on September 12, 2013 which the landlord received on September 13, 2013. The landlord failed to return the deposits and as a result, the tenant now claims double the amount back, minus the agreed \$1,000.00 for half of August 2013 rent, for a total amount of \$3,000.00.

Analysis

This case relates to damages to the rental unit. The landlord currently holds \$2,000.00 in security and pet damage deposits in trust on behalf of the tenants and now seeks to use these deposits in satisfaction of his monetary claim for damages to the rental unit.

Section 35 of the Act states that a tenant and landlord **must** inspect the condition of the rental unit at the end of a tenancy, before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit. The Act goes on to say that the landlord **must complete the condition inspection report** in accordance with the regulations and that the landlord and tenant must sign the report. Section 36(2) (c) states that the right of the landlord to claim against the security or pet damage deposit for damage to the rental unit is **extinguished** if having made an inspection with the tenant, the landlord fails to complete the condition inspection report.

The landlord claimed that he had two opportunities to complete the report and that he provided the tenant a copy of the report after the inspection was completed, which the tenant refused to sign. The 2nd opportunity the landlord mentioned only applies if the tenant fails to attend the first condition inspection proposed.

As a result, I find that the landlord and tenant did complete a condition inspection together but the landlord failed to complete the report as required by the Act. The landlord testified that he did not complete the report because he was waiting to obtain the move-in condition inspection report from his agent so he could use this for comparison. However, I find that it is not sufficient for a landlord to have the move-in inspection report in order to complete a move-out report as the report simply acts to record the state of the rental suite at the end of the tenancy and there is no provision in the legislation that allows a landlord to complete the report after the fact and provide this to the tenant for signing. Therefore, there is no discretion and I must find that the landlord's right to claim against either deposit was extinguished.

Policy Guideline 17 consists of a section titled "Return or Retention of Security Deposit through Arbitration." Point number 3 of this section states that an arbitrator **will** order the return of double the deposit if the landlord has made a claim and the right to make a claim has been extinguished under the Act. The tenant was not willing to waive the right to the doubling of the deposit. Therefore, the landlord must pay the tenants double the amount of the deposits in the amount of \$4,000.00.

In assessing the landlord's claim for damages to the rental suite, the failure of the landlord to complete a move-out condition inspection report makes assessing such a claim difficult. As a result, I am only able to rely on the resulting evidence presented by the parties.

The tenant admitted to damages to the switch plates, the heat register and not cleaning underneath the fridge freezer. The landlord claims that it took him and his wife 40 hours of cleaning of the rental suite. The landlord stated that his wife could provide evidence to confirm this.

Based on the photographic evidence, copies of invoices and the testimony of the landlord, I am satisfied that on the balance of probabilities, the tenant failed to complete sufficient repairs and cleaning to the rental suite. However, the evidence provided by the landlord is insufficient to support a claim of 40 hours of cleaning. Therefore, I am only prepared to award the landlord an appropriate amount of \$100.00 in relation to his claim.

As both parties have had some success in their claims, I am not willing to award any of the parties the filing fee for the cost of the applications.

The Act allows me to set off amounts that I find are payable to the parties. The tenants are entitled to \$4,000.00 for double the amount of the deposits, and the landlord is entitled to \$100.00 for damages to the rental suite and the \$1,000.00 which the tenants already consented to. The difference is \$2,900.00, and I order the landlord to pay this amount to the tenants.

Conclusion

For the reasons set out above, the landlord's application for a Monetary Order for damage to the unit is hereby allowed at \$100.00. The landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit and the recovery of the filing fee is hereby dismissed without leave to reapply.

The tenants' application for the return of the pet damage and security deposit is allowed in the amount of \$2,900.00. The tenants' application for the recovery of the filing fee is dismissed.

I hereby grant a Monetary Order in favour of the tenants pursuant to Section 67 of the Act in the amount of \$2,900.00.

This order is final and binding on the parties and may be enforced.

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 23, 2013

Residential Tenancy Branch

