



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, seeking an order to keep the security deposit paid by the Tenant.

Only the Landlords appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlords testified they served the Tenant with the Notice of Hearing and Application by registered mail, sent on November 1, 2013, to the address provided by the Tenant for the forwarding of the security deposit. Under section 90 of the Act the Tenant was deemed served with these documents five days later. The Tenant did not appear at the hearing. I note that refusal or neglect to accept registered mail is not a ground for review under the Act. I find the Tenant has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to keep all or a portion of the security deposit?

Background and Evidence

This tenancy began in August of 2011, with the parties entering into a written tenancy agreement, although no copy of the tenancy agreement was entered into evidence. The monthly rent was \$1,225.00 and the Tenant paid the Landlord a security deposit of \$612.50 at the outset of the tenancy. I note that since 2009 no interest is payable on deposits held.

The Landlords testified the Tenant moved out on August 31, 2013. The Landlord has provided a copy of a condition inspection report completed at the beginning of the

tenancy. The Landlord testified that at the time the outgoing condition inspection report was being performed the Tenant was in a rush as it was the last day of the tenancy. Unfortunately, the condition inspection report provided in evidence by the Landlords was a very poor photocopy.

In the portion of the report dealing with the end of the tenancy, section Z, the Landlord wrote as follows:

“[not legible] cleaning and fixes to walls and other cosmetic fixes.”

[Reproduced as written.]

The Landlord testified during the hearing that the portion that was not legible set out above read, “minor cleaning...”

The Landlords completed the portion of the report, section 2, dealing with the security deposit showing \$612.50 as the security deposit and wrote, minus the fixes under section 7.

The Tenant signed the condition inspection report. The Landlords testified that the Tenant also agreed to a deduction of \$50.00 from the security deposit for a strata fine incurred by the Tenant.

On October 23 of 2013 the Landlords sent an email to the Tenant explaining that they were deducting \$350.00 to repaint the rental unit, touch up all the walls and to fix an obvious scratch on the door of the washer/dryer area. The Landlords explained that an additional \$130.00 was needed for repair to a fridge door. The Landlord also wrote that there was a total cleaning fee of \$200.00, and that they still owed the strata \$50.00 for the fine. The Landlords were requesting an outstanding amount of \$117.50 from the Tenant after deducting the security deposit. A copy of the email was supplied in evidence.

On October 24, 2013, the Tenant replied in an email that she was very disappointed the Landlords took two months to write to her and explain they were not returning any of the deposit and were claiming an amount over and above the security deposit. The Tenant then wrote the following,

“During our walk-through in August, we feel that you misled us by saying you might need to keep only a small amount for repairs (ex. Holes left from picture frame nails we had used to hang pictures). We did not expect that you’d be keeping the entire deposit, on top of asking for additional money.”

[Reproduced as written.]

Over the course of several paragraphs in the email the Tenant questions all of the claims of the Landlords, then writes they agree to the \$50.00 strata fee and concludes by requesting the deposit be returned.

The Landlords argue that the Tenant agreed to these deductions and argues the parties had a mutual understanding that the Landlords could make deductions from the security deposit. The Landlords testified they were just doing the Tenant a favour by quickly completing the outgoing condition inspection report and not itemizing things carefully.

The Landlords now claim in this Application \$50.00 for the strata fine, \$200.00 for fixing holes and painting walls, \$150.00 for fixing a deep scratch on the washing machine compartment, \$135.00 for move out cleaning, and \$65.00 for carpet cleaning.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7 of the *Act* states:

- (1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

...

[Reproduced as written.]

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenant did not clean all of the rental unit, or make necessary repairs to fix the holes in the walls, and the carpets were not steam cleaned when the Tenant left, all as required under section 37 of the Act and the policy guidelines to the Act.

However, I do not find the Landlords and the Tenant came to an agreement on what exact amounts may have been deducted from the security deposit. It appears the Tenant did agree at the outgoing condition inspection report to some minor costs, although it is difficult to determine what amounts the parties had discussed, if any.

Therefore, I do not find the Tenant should be liable for all of the claims the Landlords made here, but rather a portion of them.

I find the Landlords are entitled to **\$200.00** for cleaning the rental unit, which includes \$65.00 for cleaning the carpets, based on the invoices and evidence submitted by the Landlords.

It is difficult to determine from the evidence what portion of the invoice for painting is for repairing nail holes and patching etc., therefore, I allow the Landlords a nominal amount of **\$50.00** for repairing holes and touch up painting. The Landlords failed to prove the entire unit had to be painted due to the Tenant, although the Tenant did agree to the minor fixes for nail holes.

I also allow the Landlords the **\$50.00** strata fee and **\$25.00** for the filing fee for the Application. I have reduced the filing fee due to the limited success of the Landlords.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

I find that the Landlords have established a total monetary claim of **\$325.00** comprised of the above described amounts and \$25.00 toward the fee paid for this application.

I order that the Landlords retain this amount from the security deposit of **\$612.50** in full satisfaction of the claim and I order the Landlords under section 67 to return to the Tenant the balance due of **\$287.50**.

I have granted the Tenant an order in these terms, which must be served on the Landlords. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant did agree to some deductions from the security deposit, although the actual amount agreed to was not set out in the condition inspection report. The Landlord had sufficient evidence to prove some of the claims made; however, the Landlords must return a portion of the security deposit to the Tenant, as they had insufficient evidence to prove all their claims.

The Tenant is granted a monetary order for the balance due from the deposit of **\$287.50**.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 3, 2014

Residential Tenancy Branch

