



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNSD, MNDC, FF, O
 Landlord MND, MNDC, FF, O

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for damage to the unit, site or property, for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee for this proceeding and for other considerations.

The Tenant filed for the return of double the security deposit, for compensation for damage or loss under the Act, regulations or tenancy agreement, to recover the filing fee for this proceeding and for other considerations.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on January 14, 2014, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on February 28, 2014, in accordance with section 89 of the Act.

The Landlord and Tenants both confirmed that they received the other's hearing packages.

The Landlord indicated in the narrative of his application that he has retained the Tenants' security deposit and is requesting to keep it as partial payment for damage to the rental unit.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is there a loss or damage to the Landlord and if so how much?
4. Is the Landlord entitled to retain the Tenants' security deposit?
5. What other considerations are there?

Tenant:

1. Are the Tenants entitled to recover double the security deposit?
2. Is there a loss or damage to the Tenants and if so how much?
3. What other considerations are there?

Background and Evidence

This tenancy started on December 15, 2012 as a fixed term tenancy with an expiry date of December 15, 2013. Rent was \$1,400.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$700.00 on November 21, 2012. The Landlord said this was his first time as a landlord so he did not know the procedures of completing a condition inspection report at the start and at the end of a tenancy. As a result the Landlord said the Tenant completed the reports but did not sign the move in report or dated it.

The Landlord said the unit was mostly new when the Tenants moved in and when the Tenants moved out the laminate floors were damaged. The Landlord estimated the cost to repair the floors to be \$4,950.00. The Landlord said he did not repair the floors because he sold the house following the tenancy. The Landlord said he reduced the price on the house because of the condition of the floors. The Landlord did not provide any evidence to support his claim that the house sold for less because of the condition of the floors and he did not provide any evidence of an actual financial loss due the condition of the floors. The Landlord said although he may not have supplied the evidence to support his claim for the damaged floors the Landlord said the Tenants damaged the floors and they should be responsible to pay for the damage.

The Tenant said the Landlord was a good landlord. Further the Tenant said they cleaned the rental unit and repaired any damage to walls and other parts of the unit prior to moving out. The Tenant said they did a move out condition inspection with the Landlord's daughter and she said the Landlord would e-transfer the Tenant's security deposit to them. The Tenant said the Landlord did not return the security deposit, but sent them a claim for \$4,950.00 for damaged floors. As a result the Tenant said they have made application for double their security deposit in the amount of $2 \times \$700 = \$1,400.00$. As well the Tenant said she has applied for \$50.00 of lost wages and \$100.00 for plants that she believes the Landlord threw out. The Tenant said she did

not provide any evidence for her lost wages or for the plants and pots that she believes the Landlord threw out

The Tenant said in closing that she is requesting double her security deposit, in the amount of \$1,400.00, to be returned because the Act states that if the Landlord does not handle the security deposit correctly the Tenant is entitled to double the deposit. The Tenant said the Landlord has not returned her security deposit in the required time and he has not applied to retain it.

The Landlord said in closing that he was a onetime landlord and even if he did not do everything right the Tenants damaged the floors in the rental unit and they should be responsible for them and the financial loss that he incurred.

Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did not complete a move in condition inspection report as required by the regulations; therefore the Landlord's claim against the Tenants' security deposit for damage is extinguished. As a result, I dismiss the Landlord's request to retain the Tenants' security deposit.

Section 23 of the Act say that a landlord and tenant must do move in condition inspections to establish the condition of the rental unit at the start of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit. In this situation the Landlord has established there was damage to the rental unit as the flooring is damaged. In determining a claim for damage or loss an applicant **must** establish four things in order to prove and be successful in a claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

Although the Landlord has established there was damage during the tenancy the Landlord did not repair the damage therefore the Landlord has not proven an actual financial loss exists. As well because the repairs were not done and there is no other evidence to support a financial loss there is no verification of the amount required to rectify the loss or damage. The Landlord has not established grounds to prove his claim. Consequently I dismiss the Landlord's claim for damage or loss based on lack of evidence to establish a loss or damage. I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

With respect to the Tenants' application for double their security deposit in the amount of \$1,400.00.

Section 38 (1) of the Act says that 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.

And Section 38 (6) says 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.

I find from the Tenants' testimony and written evidence that they did give the Landlord a forwarding address in writing on December 31, 2013. The Landlord did not repay

security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, but the Landlord did apply for dispute resolution on January 9, 2014. The Landlords application did not check off the request to retain the Tenants' security deposit, but the Landlord makes reference to retaining the Tenants' security deposit in the Details of the Dispute' in the application which I accept as the Landlord's request to retain the Tenants' security deposit. Consequently I find the Landlord did make an application to retain the Tenants' security deposit within the 15 days allowed by the Act; therefore I find the Tenants are not entitled to the return of double their security deposit, but the Tenants' are entitled to the return of their original security deposit of \$700.00. The Tenants' application for the return of double their security deposit is dismissed without leave to reapply.

As the Tenants have only been partially successful in this matter I order the Tenants to bear the cost of the \$50.00 filing fee for this proceeding which they have already paid.

As the Landlord has not been successful in this matter I order the Landlord to bear the \$50.00 filing fee for his application, which he has already paid.

A monetary order has been issues to the Tenants for the following:

Security deposit	\$ 700.00
Total	\$ 700.00

Conclusion

A monetary order has been issued to the Tenants' for \$700.00.

The Landlord's application is dismissed without leave to reapply.

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: May 12, 2014

Residential Tenancy Branch

