



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of double her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant gave sworn testimony and written evidence that she sent the landlords a copy of her dispute resolution hearing package by registered mail on January 21, 2014 and February 3, 2014. The landlords confirmed that they received the tenant's hearing package and written evidence package. The tenant confirmed that she received a copy of the landlords' dispute resolution hearing package and written evidence sent by the landlords by registered mail on April 1, 2014. I am satisfied that the parties served one another with the above documents in accordance with section 89(1) of the *Act*.

Although the tenant sent the landlords a CD containing digital evidence, the landlords testified that they were unable to access this evidence because they do not have the relevant equipment to do so. In accordance with the Residential Tenancy Branch's (the RTB's) Rules of Procedure, I have not considered this evidence as the tenant has not checked with the landlords beforehand to ensure that they had a way of accessing this information.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to retain the tenant's security deposit? Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act? Are either of the parties entitled to recover their filing fees from one another?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and invoices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects these claims and my findings around each are set out below.

This periodic tenancy began by way of an oral agreement on or about July 26, 2009. Monthly rent was set at \$750.00, plus utilities. The landlords continue to hold the tenant's \$375.00 security deposit paid on or about July 26, 2009.

This tenancy ended by August 31, 2013, after the landlords issued the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) on July 5, 2013. The tenants vacated the rental unit on August 29, 2013. The parties agreed that the tenant gave the landlord her forwarding address in writing on August 29, 2013.

Both parties agreed that there was no joint move-in condition inspection conducted at the beginning of this tenancy. Although the parties both participated in a joint move-out condition inspection on August 29, 2013, the landlords did not create a report of that inspection. In this regard, the landlords entered into written evidence their March 28, 2014 document, which read in part as follows:

*We have rented out this house for approximately 20 years and have never needed to fill out a written move in or out inspection report... No one has requested a rental inspection report to be done, including (the tenant)...
...we have found there has not been a need for a signed rental contract. No one has requested a signed rental contract including (the tenant)...*

The tenant's application for a monetary award of \$750.00 was for the return of double her security deposit as she maintained that the landlords contravened section 38 of the Act by retaining her security deposit without legal authorization to do so.

The landlords' application for a monetary award of \$495.50 included the following items outlined in their March 28, 2014 document:

Item	Amount
Carpet Cleaning	\$157.50
Replacement of Toilet	118.00
Curtains/Window Coverings	120.00
Removing Silicon & Cleaning Frames	60.00
Clean Window Screens	40.00
Total of Above Items	\$495.50

The landlords testified that they told the tenant that their agreement to allow the tenant to keep a dog in the rental unit was contingent on her having the carpets professionally steam cleaned at the end of her tenancy. The tenant and her father who was her witness at this hearing testified that the landlords told them the tenant would need to steam clean the carpets at the end of her tenancy. The landlords also entered written evidence from the person who lived in this rental unit before the tenant, who also agreed that he was told that the rental unit needed to be professionally steam cleaned at the end of his tenancy. However, the landlords testified that the rental unit was not professionally steam cleaned before the tenant took possession of the rental unit. They said that the tenant was in such a hurry to move into the rental unit that she told the previous tenant that he did not need to steam clean the carpets because she would do this herself.

The landlords supplied written evidence, some receipts and two photographs to show the condition of the rental unit at the end of this tenancy and why they were seeking a monetary award for damage at the end of this tenancy.

Analysis – Landlords' Claim for Damage

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. The tenant and her father disputed all of the items claimed in the

landlords' application. They maintained that the rental unit was without window coverings when this tenancy began, and the coverings that were present were left in a storage shed where they remained after this tenancy ended. The tenant's father testified that he and his wife paid for window coverings, which the tenant took with her when she vacated the rental unit in August 2013. They also testified that the toilet lid was broken when this tenancy began as was the toilet seat. The tenant and her father testified that the tenant paid for a new toilet seat but left the toilet lid in the same condition it was in when the tenancy started.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. While the landlords entered written evidence that it has never been their practice to create reports after conducting inspections of the premises with tenants, the preparation of these reports is very useful in establishing the condition of a rental unit both before and after a tenancy. Separate from the usefulness of these reports to act as a base point for assessing damage during a tenancy, sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 36(1) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

36 (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

Similar provisions are in place in section 25 of the *Act* with respect to any failure by a landlord to undertake a joint move-in condition inspection and create a joint move-in condition inspection report. I find that the landlords' failure to undertake a joint move-in

inspection and to create a joint move-out condition inspection report (in accordance with section 36(2)(c) of the *Act*) extinguished the landlords' right to claim against the tenant's security deposit. I find that the landlords had no right to withhold the tenant's security deposit for damage arising out of this tenancy.

Whether or not the landlords held a security deposit for this tenancy, they are still able to submit a separate claim for damage arising out of this tenancy. However, without a signed tenancy agreement in which the responsibilities of the tenant are clearly outlined and without a signed joint move-in and move-out condition inspection report, the landlords' claim for damage rests on their sworn testimony with respect to the damage claimed in their application.

The burden of proof rests with the party claiming the monetary award, in this case the landlords. Any lack of agreement as to whether the rental unit had to be professionally steam cleaned or simply steam cleaned at the end of this tenancy could have been settled on the basis of the provisions of a signed Residential Tenancy Agreement required for all tenancies in this province since 2004. I find that the landlords' failure to comply with the requirement under the *Act* to create a written Residential Tenancy Agreement for this tenancy leaves them in the position where they cannot successfully refute the disputed oral terms of their agreement with the tenant. In this regard, I also note that their own written evidence also confirmed that they never ensured that the previous tenant had the premises professionally steam cleaned before this tenancy began. Whether or not the tenant told the prior tenant she would look after this matter herself has little bearing on the comparison that I make between the condition of the rental unit at the beginning of this tenancy and the end of the tenancy. As the tenant did steam clean the carpets in the rental unit after her tenancy ended, although not a professional steam cleaning, I find that the tenant may very well have left the carpets in better condition than when her tenancy began.

Other issues in dispute, including the presence or absence of window coverings in the rental unit and the condition of the toilet and windows at the beginning and end of the tenancy, could also have been established and evaluated had the landlords conducted the required joint move-in condition inspection or created a report of the joint move-out condition inspection of August 29, 2013. Without such evidence or even photographs showing the condition of the rental unit before and after this tenancy, I find that the landlords have failed to meet the burden of proof required to entitle them to any monetary award for damage arising out of this tenancy. For these reasons and based on a balance of probabilities, I dismiss the landlords' claim for damage without leave to reapply. As the landlords have been unsuccessful in their application, I also dismiss their application for the recovery of their filing fee from the tenant.

Analysis- Tenant's Application

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the security deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case and as the tenancy ended on the same date as the forwarding address was conveyed to the landlords, the landlords had 15 days after August 29, 2013 to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "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." As there is no evidence that the tenant has given the landlords written authorization at the end of this tenancy to retain any portion of his security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. In fact, the landlords' application to retain the security deposit was filed with the RTB on March 31, 2014, seven months after this tenancy ended. The tenant gave sworn oral testimony that she has not waived her right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of her security deposit with interest calculated on the original amount only. No interest is payable.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application from the landlords.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover double her security deposit plus her filing fee:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act (\$375.00 x 2 = \$750.00)	\$750.00
Recovery of Filing Fee for Tenant's Application	50.00
Total Monetary Order	\$800.00

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the landlords' application 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 06, 2014

Residential Tenancy Branch

