



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNSD

For the landlord – MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants applied to recover double the security deposit

One of the tenants, an agent for the tenant and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order for double the security deposit?

Background and Evidence

The parties agree that this tenancy started on August 01, 2010 for a month to month tenancy. The parties had a verbal agreement that rent for this unit was \$750.00 per month. This was later reduced to \$650.00 per month. Rent was due on the 15th day of each month. The tenants paid a security deposit of \$375.00 on August 01, 2010. However, at a previous hearing between the parties on October 18, 2013 the landlord was ordered to retain \$50.00 from the security deposit for the landlords filing fee for that hearing. This leaves an amount held in trust by the landlord of \$325.00. The landlord did not complete a move in or a move out condition inspection report with the tenants at the start or end of the tenancy. The tenants provided a forwarding address in writing to the landlord on November 28, 2013.

The landlord testifies that the tenants were moving to Canada from overseas and the landlord's neighbour organised with the landlord about the tenants renting this unit. At the end of the tenancy the male tenant SK and the tenants' son walked around the unit with the landlord and a discussion took place regarding the damages the landlord saw in the unit. The male tenant saw the damages and agreed that this was done during the tenancy but he refused to either pay for the damage or to have anything repaired. The male tenant agreed verbally to the landlord that the landlord could keep the security deposit and asked the landlord how much the damages would cost to repair. The landlord testifies that he informed the tenant that it could be \$1,000.00 or more above the security deposit.

The landlord testifies that the living room window was left with cracks which were seen when the landlord opened the blinds. This damage was paid for by the landlords

insurance however the landlord had to pay \$20.00 deductible. A receipt has been provided in evidence.

The landlord testifies that the kitchen countertop was left damaged. There was a large chunk missing from the countertop under the sink. This piece alone could not be repaired and the entire countertop had to be replaced at a cost of \$945.00. The landlord has provided an invoice and photographic evidence of this damage. The landlord testifies that the countertop was 14 to 15 years old.

The landlord testifies that the tenants had not cleaned the hood over the stove and part of the hood was damaged. The landlord testifies that this was approximately 14 years old and it was cheaper to replace the hood with a new one rather than pay someone to clean it and get the part to repair it. The landlord has provided photographic evidence showing the hood and an invoice for the replacement hood of \$46.02.

The landlord testifies that the tenants damaged the vertical blinds in the living room. When the landlord opened the blinds to look at the window damage, five or six sections of the blinds fell out. The landlord testifies that the male tenant saw this and was asked to either repair or replace the blind but the male tenant refused to do this. The damaged blind slats could not be matched with the existing ones and the entire blind had to be replaced. The landlord has provided photographic evidence showing the blind slats on the floor and in invoice for \$364.00. The landlord testifies that part of this invoice is for two bedroom blinds which were not damaged by the tenants. The landlord testifies that these bedroom blinds cost approximately \$40.00 each so \$80.00 can be deducted from that invoice.

The landlord testifies that the tenants had left an extreme amount of holes in the walls from picture nails and there was some other damage to the walls. The tenant refused to repair the walls and the landlord had to have the walls repaired and repainted at a cost of \$400.00. The landlord has provided an invoice for this work. The landlord testifies that the unit was freshly painted just prior to the tenants moving in.

The landlord testifies that the carpets were left extremely dirty by the tenants. The landlord tried to clean the carpets but was unsuccessful so the carpets had to be replaced at a cost of \$1,800.00. The landlord testifies that the carpets were five to six years old. The landlord has provided photographic evidence and an invoice for the replacement carpets.

The landlord testifies that the tenants caused damage to the stove. The oven was left very dirty, the bottom drawer had a wheel missing and was difficult to open and two burners did not work. The landlord testifies that the stove was 14 or 15 years old. The landlord purchased a new stove at a cost of \$454.80 and has provided an invoice for this and photographic evidence showing the condition of the stove.

The landlord seeks an Order to keep the tenants security deposit of \$325.00.

The tenant disputes the landlords claim. The tenant attending TK testifies that the cracks in the window were there at the start of the tenancy and were not caused by the tenants. The countertop was also damaged with burn marks and many chips and chunks were there at the start of the tenancy and this damage was not caused by the tenant.

The tenant testifies that the fan hood had been cleaned by the tenants and the damage, if any, was not caused by the tenants. The tenant testifies that the landlord just wanted to replace the hood and expects the tenants' to pay for this. The tenant testifies that when her husband and son walked around the unit with the landlord the landlord said that everything was fine. The landlord did not ask the male tenant to repair or replace anything. The tenant TK agrees she was not present at that time.

The tenant testifies that the blinds worked fine during their tenancy. The tenant refers to the landlord's photographs and testifies that they look as if the landlord has pulled slats out of the blinds and then taken the pictures.

The tenant disputes the landlords claim for damage to the walls. The tenant testifies that they did not hang any pictures on the walls and the unit was not freshly painted at the start of their tenancy or at any time during their tenancy. The tenant testifies that the landlord has provided no evidence to show any damaged caused to the walls.

The tenant disputes the landlords claim that the carpets were left dirty at the end of the tenancy. The tenant refers to the photographic evidence and testifies that this is misleading as it is shadows and not dirt. The tenant testifies that they did not clean the carpets at the end of the tenancy but they were vacuumed.

The tenant testifies that the stove was working fine during the tenancy and even on the last day the tenant used the stove top to cook a meal. The tenant disputes that she ever used the oven during the tenancy as they used a smaller oven instead. The tenant testifies that the oven was dirty at the start of the tenancy and had rust marks.

The tenant seeks to recover double the security deposit. The tenant agrees that the landlord did have an Order to keep \$50.00 from the security deposit at the last hearing. The tenant testifies that they have never given the landlord written permission to keep any of the security deposit.

The parties decline to cross examine the other party.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damages I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;

- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I find the landlord did not complete a move in or move out condition inspection report. The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The tenant has disputed that they caused damage to the window, the countertop, the hood fan, the blinds, the walls and the stove. The tenant has testified that all this damage was in place at the start of the tenancy and therefore the tenants cannot be held responsible to pay to rectify the damage.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the 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.

The landlord was not able to provide any corroborating evidence to show that these items were damaged by the tenants during their tenancy and that they were not already damaged at the start of the tenancy. The landlord has provided a letter from a neighbour who has stated that the unit and appliances were in an impeccable condition at the start of tenancy and that the unit was left in a less than desirable condition when the tenants moved out. However this witness statement has not been sworn before a Notary and the landlord has not requested that this neighbour attend the hearing to give testimony under oath or to submit to cross examination. Therefore I can place very little weight on this written statement. Consequently, the landlords claim for damage has not met the burden of proof and is dismissed.

With regard to the landlords claim for replacement carpets, It is clear from the photographs provided by the landlord and in the tenants digital evidence showing the carpets, that the carpets are unclean at the end of the tenancy. The tenant agreed that they had not shampooed or steam cleaned the carpets at the end of the tenancy as required when a tenancy exceeds one year. However I have insufficient evidence from the landlord to show the condition of the carpets at the start of the tenancy or that they had been provided to the tenants in a clean condition. Furthermore the landlord testified that he and his wife had attempted to clean the carpets before they were replaced. A landlord has an obligation under s. 7(2) of the *Act* to mitigate any loss; I have insufficient supporting evidence to show what attempts the landlord made to shampoo or steam clean the carpets prior to replacing them or that professional cleaning could not have removed the stains. Consequently this section of the landlords claim is dismissed.

With regard to the landlords claim to keep the security deposit; S. 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenants even if the tenants refuse to participate in the inspections or to sign the condition inspection report. In failing to

complete the condition inspection reports when the tenants moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished. This section of the landlords claim is therefore dismissed.

The landlord is however entitled to retain \$50.00 from the security deposit as Ordered at the previous hearing held on October 18, 2013.

With regard to the tenants' application to recover double the security deposit; s. 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants' forwarding address in writing on November 28, 2013. As a result, the landlord had until December 13, 2013 to return the tenants' security deposit as the landlord's right to file a claim to keep it has been extinguished. I find the landlord did not return the security deposit and therefore, I find that the tenants have established a claim for the return of double the security deposit of **\$650.00** pursuant to section 38(6)(b) of the *Act*.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$650.00**. The Order must be

served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

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: April 09, 2014

Residential Tenancy Branch

