



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 dealt with applications by both the landlord and the tenants. The landlord applied for a monetary order for damage to the unit and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to keep all or part of the security deposit; and to recover the RTB filing fee. The tenants applied for the return of their security deposit, and to recover their RTB filing fee.

Both the landlord and tenants attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?
Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The tenancy agreement signed by the parties on October 4, 2013 indicates the month-to-month tenancy started on October 1, 2013 and the tenants were obligated to pay rent of \$1,350.00 monthly in advance on the first day of the month. The tenants also paid a security deposit of \$675.00.

The tenants gave evidence that they gave written notice on January 31, 2014 that they would move out on March 1, 2014. One tenant (MC) moved out toward the end of January, and the other tenant (ER) moved out February 18, 2014. The tenants' evidence is that they paid rent for February 2014.

One of the tenants provided a written statement dated May 26, 2014 prior to the hearing in which she says she providing the forwarding address to the landlord in writing on March 3rd. The tenant gave evidence at the hearing that she provided the forwarding address to the landlord in writing on March 1, 2014 by placing it in the mailbox of the rental unit, and by texting it to her. The tenants' evidence is that the landlord was avoiding them at that point. Later in the hearing, the tenant said she placed the forwarding address in the rental unit mailbox on March 2, 2014.

The landlord denies the tenant texted her with the forwarding address, and states she found the forwarding address in the rental unit mailbox on March 7, 2014.

The tenants' evidence is that they wanted to do a move-out inspection with the landlord after February 18th (when the second tenant moved out); they suggested days but the landlord did not conduct a move-out inspection with them. One of the tenants provided a print-out of her exchange of text messages with the landlord in February and March 2014. The print-out of text messages confirms the tenant requested a move-out inspection.

The landlord says she offered to do a move-out inspection three times in February and twice in March. The landlord provided copies of text messages in support of her assertion. The copies are difficult to read but the relevant ones appear to read as follows:

- "... Let me know when u r next in town if u want to meet"
- "Hi [tenant] we need to go to the house together. Is there a time 2moro that could work?" Tenant response: Tomorrow doesn't work I'm not in courtenay"

The landlord makes the following claims regarding cleaning and damage:

	<i>What</i>	<i>Amount</i>	<i>Landlord's evidence</i>	<i>Tenants' evidence</i>
1	Contaminated 8x10 white area carpet	452.00	Carpet was new before tenancy. Soaked with dog urine; disposed of and not replaced. Claims original cost.	Dog was only at rental unit about 5 days. Agree carpet needed cleaning but disagree it was not salvageable.

2	Carpet cleaning, wall to wall carpets	250.00	Both bedrooms and stairs cleaned prior to tenancy (receipt provided for \$262.02). After tenancy, damaged by dog urine and feces. Carpets ripped out and replaced by laminate.	Dog was only at rental unit about 5 days. Both bedroom doors were kept closed.
3	Clean walls, floors, windows	400.00	Fresh paint before move-in. Kitchen clean after tenancy but not floor. Feces smears on floor, walls dirty. Landlord spent 16 hours cleaning walls, floors, windows, and two bathrooms. Calculated time at \$25 per hour.	Tenants cleaned everything before move-out, walls were perfect. Floors were mopped. Windows were not cleaned but seemed OK after five months of tenancy. Receipt provided for cleaner hired at move-out.
4	Clean chimney	125.00	Landlord paid 125 to have chimney cleaned shortly after tenancy started (no receipt). Tenants were responsible to have cleaned at end of tenancy.	Tenants disagree the landlord ever had the chimney cleaned.
5	Paint damaged walls & stairwell	140.00	Tenant's sofa left black stains on walls and chipped paint. King-sized bed was moved via balcony and scraped paint. Landlord painted 85.00 materials, 55.00 labour	Tenants removed black mark on wall with "magic eraser". Tenants say there was no damage to the stairwell and the outside deck railing was already chipped.
6	Clean dog feces from yard	25.00	Nominal amount for landlord's time picking up feces and cig butts	Tenants say all cigarette butts and dog feces were picked up. Other dogs may have come in yard.

7	Mailing charges and filing fee (RTB filing fee is \$50)	75.00		
8	Lock replacement	50.00	Replacement of lock tenants installed on bedroom door; tenants did not leave keys. No receipt.	Tenant says keys were left in top left drawer of cabinet in room.
	<i>Total Claim</i>	<i>1,467.00</i>		

Analysis

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, I find the tenancy ended on February 28, 2014 (the last day of the rental period). At issue is when the tenants provided their forwarding address to the landlord in writing. The tenant included in her written evidence a printout of her text message exchange with the landlord in February and March. The text message exchange does not contain her forwarding address in writing; I conclude that the tenant did not text her forwarding address to the landlord. The landlord agrees she received the tenants' forwarding address in writing in the rental unit mailbox on March 7, 2014. The tenant said in the written statement she submitted before the hearing that she placed it there on March 3, 2014. At the hearing, the tenant said at one point that she placed it there March 1, 2014 and at another point said she placed it there March 2, 2014. I conclude the tenants have not proven on a balance of probabilities that the landlord missed the 15 day deadline by applying for dispute resolution on March 18, 2014 (the RTB date stamp on the Landlord's Application for Dispute Resolution). For that reason, the tenants are not entitled to double their security deposit as provided for in Section 38(6).

The parties disagree about whether the landlord offered the tenants two opportunities to participate in a move-out inspection. I make no finding on this point because it has no impact on the outcome of these applications. According to Section 36(2)(a), the landlord's failure to comply with the requirements of Section 35(2), by offering two

opportunities for a move-out inspection, extinguishes the landlord's right to claim against the security deposit. However, Section 36(2)(a) does not have any real impact here because of the provisions of other sections of the Act. A landlord is entitled to make a claim for a monetary order for damage to the rental unit. In addition, Section 72(2)(b) permits me to apply the security deposit to satisfy or partially satisfy any monetary order that I award the landlord. For that reason, I may deal with the landlord's claims regardless of whether the landlord offered two opportunities for a move-out inspection.

The landlord bears the burden of proof in proving her claims for damage and cleaning. For that reason, where the tenants disputed the landlord's evidence and the landlord did not provide independent or photographic evidence of damage or need for cleaning, her claims have not been accepted.

Landlord's claims for cleaning and damage:

1	Area rug ruined	Claim partially accepted. Tenants agree carpet needed cleaning. No photographic or independent evidence that the carpet could not be cleaned. Cost of cleaning awarded.	100.00
2	Wall-to-wall carpet cleaning	Claim accepted. Tenants are responsible to clean carpets at end of tenancy.	250.00
3	Clean walls, floors, windows.	Claim partially accepted. No independent or photographic evidence cleaning was required at move-out. Tenants agree windows not washed; window cleaning amount awarded (2 hours).	50.00
4	Chimney cleaning	Claim accepted. Tenants are responsible to clean fireplace at end of tenancy if fireplace used. Estimate of cost accepted.	125.00
5	Paint stairwell and railing	Claim dismissed. No independent or photographic evidence of damage.	0
6	Yard cleaning	Claim dismissed. No independent or photographic evidence of problem.	0
7	Mailing charges and filing fee.	Claim partially accepted. Act only makes provision for recovery of filing fee and not other costs of participating in hearing.	50.00
8	Lock replacement	Claim accepted. No evidence from tenants that landlord was told where to find keys to the lock tenants installed.	50.00
		Total award:	625.00

The total amount due the landlord is \$625.00. The landlord may therefore retain \$625.00 from the security deposit and must return the balance of \$50.00 to the tenants. I grant the tenants a monetary order for that amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to retain \$625.00 from the security deposit. I award the tenants a monetary order for \$50.00.

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: July 18, 2014

Residential Tenancy Branch

