



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF
MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order as compensation reflecting the double return of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the original fixed term of tenancy was from November 01, 2012 to October 31, 2013. Thereafter, tenancy continued on a month-to-month basis. Monthly rent of \$1,250.00 was due and payable in advance on the first day of each month, and a security deposit of \$625.00 was collected. A move-in condition inspection report was not completed.

The tenant gave notice to end tenancy, and in her application she claims to have provided “almost 2 months notice.” As to how notice was given, the tenant claims it was provided in writing, while the landlords claim it was given orally.

There appears to be no dispute that the tenant’s original intent was to end tenancy by not later than May 01, 2014. However, in response to the tenant’s request the parties agreed to extend the tenancy to mid-May 2014. Ultimately, the tenant vacated the unit on May 13, 2014.

As to a forwarding address, in her application the tenant claims that she informed the landlords as follows:

In early May, when I paid the rent to the landlords, I gave them my forwarding address in writing through their mail slot with the rent. I also gave it to them in a text message on May 14th, 2014.

The landlords dispute that a forwarding address was provided in writing through their mail slot, but they do not dispute that it was provided by way of text message on May 14, 2014. In regard to May's rent, the landlords claim that it was never paid.

A move-out condition inspection report was not completed. It is understood that new renters took possession of the unit on May 15, 2014. Thereafter, the landlords' application for dispute resolution was filed on June 05, 2014, while the tenant's application was filed a day later on June 06, 2014.

Analysis

At the outset, the particular attention of the parties is drawn to the following legislation:

ACT

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

REGULATION

Section 16: **Scheduling of the inspection**

Section 17: **Two opportunities for inspection**

Further, section 37 of the Act of the Act addresses **Leaving the rental unit at the end of tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and....

Additionally, Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant – Responsibility for Residential Premises."

Based on the affirmed testimony and documentary evidence, which includes but is not limited to, photographs and third party letters submitted by the landlords, the various aspects of the respective claims and my related findings are set out below.

LANDLORDS

\$625.00: *unpaid rent for the first half of May 2014*

As noted above, the tenant claims she paid this rent in early May by way of the landlords' mail slot. In support of her claim she has provided bank records showing a withdrawal from her account on May 01, 2014 in the amount of \$2,000.00. Additionally, she refers to numerous text messages exchanged between her and the landlords in relation to a range of matters, including payment of rent. There are, however, no copies of any text messages in evidence.

The landlords dispute that they received payment of rent for the first half of May through their mail slot, and claim that this is the reason why there is no receipt in evidence.

On balance, I prefer the landlords' evidence. I find that the tenant's bank records are insufficient proof that \$625.00 of the \$2,000.00 withdrawn from her account was paid to the landlords. Further, I find it more likely than not that an individual who intended to pay this amount would insist on a receipt at the time of payment. In the result, I find that the landlords have established entitlement to the full amount claimed.

\$90.00: *½ cost of carpet cleaning*

Under the heading, CARPETS, Policy Guideline # 1 provides in part:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of the tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

I find that the length of this tenancy was approximately 18 months, and in her written submission the tenant acknowledges ownership of a dog. The tenant testified that while she vacuumed the carpet, she did not have it either steam cleaned or shampooed. Following from all of the foregoing, I find that the landlords have established entitlement to the full amount claimed in their application, which is $\frac{1}{2}$ the amount paid.

\$100.00: $\frac{1}{2}$ cost of removal of old carpet / installation of new carpet

\$600.00: $\frac{1}{2}$ cost of new carpet & underlay

Policy Guideline # 40 speaks to "Useful Life of Building Elements," and provides that the "useful life" of carpet is 10 years.

In their application the landlords claim the carpet was "5 years old." However, during the hearing the landlords testified that the carpet was approximately 7 years old at the time when the subject tenancy began. Adding to this a tenancy of some 18 months, I find that the carpet was approximately $8\frac{1}{2}$ years old when tenancy ended, or 18 months short of its "useful life."

However, as earlier noted, neither a move-in nor a move-out condition inspection report was completed. In the result, further to the conflicting testimony around the condition of the carpet, photographs taken within the unit, in addition to third party statements, there are no formally documented comparative results of the carpet's condition in evidence, such as would be reflected in move-in and move-out condition inspection reports when completed with the participation of both parties.

Pursuant to all of the above, I find that the landlords have established entitlement to nominal compensation in the limited amount of **\$100.00**.

\$50.00: *filing fee*

As the landlords have achieved success with the main aspects of their application, I find that they have also established entitlement to recovery of the full filing fee.

Total: \$865.00 (\$625.00 + \$90.00 + \$100.00 + \$50.00)

TENANT

\$1,250.00: *(2 x \$650.00) double return of the original security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the

landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

I find that the tenancy ended on May 13, 2014, and that the tenant provided her forwarding address on May 14, 2014. In order to comply with the statutory 15 day period, the landlords' application would need to have been filed by not later than May 29, 2014. However, it was filed on June 05, 2014. Accordingly, I find that the tenant has established entitlement to return of the double amount claimed.

\$50.00: *filing fee*

As the tenant has succeeded with the main aspect of her application, I find that she has also established entitlement to recovery of the full filing fee.

Total: \$1,300.00 (\$1,250.00 + \$50.00)

Offsetting the respective entitlements, I find that the tenant has established a net claim of **\$435.00** (\$1,300.00 - \$865.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$435.00**. Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court and enforced 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: October 08, 2014

Residential Tenancy Branch

