



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, MNDC, FF
 Tenants: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for repairs and cleaning; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on January 10, 2013 for a 6 month and 1 day fixed term tenancy beginning on February 1, 2013 for a monthly rent of \$1,050.00 due on the 1st of each of month with a security deposit of \$525.00 and a pet damage deposit of \$525.00 paid. While the parties moved out of the rental unit on June 23, 2014, the tenancy ended on June 30, 2014.

The tenants submit that they provided the landlord with their forwarding address on May 16, 2014 when they provided him with their notice to end the tenancy; again by leaving it in the mailbox of the rental unit on June 23, 2014; and by having a friend deliver it to the landlord on July 7, 2014.

The landlord submits that he did not receive the tenants forwarding address until July 7, 2014 when the neighbour provided it to him. The landlord provided a copy of the hand written note he received on July 7, 2014. The landlord submitted his Application for Dispute Resolution seeking to claim against the deposits on July 21, 2014.

The parties agreed the landlord had provided the tenant with two cheques – one on July 18, 2014 in the amount of \$50.00 and one on July 31, 2014 in the amount of \$63.70. The tenants submit they have not yet cashed the cheques. The landlord explained that this was the amount of the difference between what he holds in the deposits and the amount of his claim against the tenants.

The parties agree that no move in or move out inspection was completed. The landlord submits that despite him wanting to complete a move in inspection the tenants insisted that one was not necessary. He also states that the tenants were supposed to move out on June 30, 2014 but unbeknownst to him they moved out a week early, so he did not complete a move out inspection.

The tenants submit that they brought an inspection form with them at the start of the tenancy for the landlord to complete a move in inspection but he just left and did not complete an inspection. The tenants submit that the landlord did not provide them with a written notice of the need to complete a move out inspection.

The landlord submits that a portion of his claim – \$367.50 is for plumbing work required during the tenancy. The landlord submits that the pipes were clogged as a result of the tenants flushing inappropriate items into the system. The tenants submit that the backups resulted from tree roots that had infiltrated the main pipes due to the age of the pipes and possible cracks.

In addition the landlord claims \$142.80 for labour and plumbing supplies to replace the exterior tap. The landlord submits that during the tenancy the tenants must have caused the pipe to burst and now every time the faucet is used it floods the house. The tenants dispute this claim.

The landlord has claimed \$50.00 for a used door for a bedroom and \$24.00 for used carpeting for a closet. However, the landlord provided no evidence as to why this was needed and when questioned about it during the hearing he could not explain why he was claiming it.

The landlord claims, based on his photographic evidence submitted, for cleaning the house and yard in the amount of \$245.00; cleaning and deodorizing supplies in the amount of \$37.00; and \$20.00 for gas for the removal of garbage and yard debris.

The tenants submit that they did not leave any garbage behind; that the reason for the condition of things like the flooring and the stove is that they were in that condition at the start of the tenancy and they should not be held responsible for cleaning them any more

than they did. They state the unit was much cleaner when they moved out than when they moved in.

The tenants also question when the landlord took the photographs he submitted into evidence. They state, for example, that the yard did not look anything like the pictures submitted. The tenants point out that in the 9 photographs of the yard the landlord is focused in on only one small section and that the whole yard was well tended at the end of the tenancy. The tenants also suggested the photographs were not taken at the end of the tenancy.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* states a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

In regard to the landlord's claim for the costs of repairs to the plumbing I note that both parties have provided verbal testimony as to the cause of the plugged pipes, however, as this is the landlord's claim the burden rests with him to provide sufficient evidence to establish claim.

When both parties provide testimony that reasonably explains the circumstances regarding a financial claim based on two different versions, the party with the burden of proof must provide additional evidence to support their claim. In this case, the landlord has provided no corroborating testimony or evidence that would contradict the tenants' version of the cause for the plugged pipes.

As such, I find the landlord has failed to provide sufficient evidence to establish his claim for \$367.50 for the plumbing repairs of March 2014.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave it reasonably clean and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that allow the tenant access to and within the residential property.

In order to establish the tenants have failed to comply with Section 37 the landlord must provide evidence to establish that any repairs or cleaning required resulted from the tenant's actions or neglect during the tenancy.

As the landlord has provided no evidence to establish the condition of the rental unit at the start of the tenancy and because he was unable to provide any evidence or testimony regarding the replacement door and carpet, I find that the landlord has not established that the tenants caused any damage to these items during the tenancy.

Likewise and based, in part, on the fact that the tenants dispute the landlord's evidence that he attributes to the end of the tenancy I find the landlord has failed to establish that the requirement for cleaning and garbage removal resulted from the tenancy.

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the landlord has provided evidence to support his position that he received the tenants' forwarding address on July 7, 2014 and the tenants have provided no evidence to support their position that they had provided their forwarding address to the landlord in writing prior, I find the landlord received the tenants' forwarding address on July 7, 2014.

As such, I find the landlord had until July 22, 2014 to either return the deposit in full or file an Application for Dispute Resolution to claim against the deposit. As the landlord filed his Application on July 21, 2014 I find the landlord has complied with the requirements of Section 38(1) and the tenants are not entitled to double the amount of the security deposit.

However, as the landlord has failed to establish a claim to retain either the pet damage deposit or the security deposit I find the tenants are entitled to return of both deposits in full.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,100.00** comprised of \$525.00 security deposit; \$525.00 pet damage deposit and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I order that tenants are entitled to cash the cheques provided to them by the landlord in July 2014 in the amounts of \$50.00 and \$63.70. I order that should the tenants be successful in negotiating these two cheques then this will satisfy \$113.70 of the above noted monetary order leaving a balance owing of \$986.30.

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: January 06, 2015

Residential Tenancy Branch

