



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants; the landlord's agent.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for return of double the security deposit, for compensation, and to recover the filing fee from the tenants for this Application for Dispute Resolution, pursuant to Sections 32, 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began as a 1 year fixed term tenancy in August 2012 for the monthly rent of \$1,100.00 due on the 1st of each month and that a security deposit of \$550.00 was paid. The tenants submitted a copy of a tenancy agreement signed by the parties on June 30, 2013 for a 1 year fixed term tenancy beginning on August 1, 2013 for a monthly rent of \$1,100.00 due on the 1st of each month and that a pet damage deposit of \$250.00 was paid. The parties also agree the tenancy ended when the tenants vacated the rental unit by July 29, 2014.

The tenants submitted a copy of a Condition Inspection Report signed by the parties on July 29, 2014. The Report included the tenants forwarding address. The tenants acknowledge receiving a cheque dated August 8, 2014 in the amount of \$45.00. The tenants seek return of their full security deposit and pet damage deposit.

The landlord submits that the tenants had signed the Condition Inspection Report agreeing to a deduction from their security deposit of "minus cleaning fees" and "0" deduction from the pet damage deposit. The female tenant submitted that the phrase "minus cleaning fees" was not in the security deposit deduction and that it was left blank when she signed it.

The tenants also submitted that the word “dirty” and the phrase: “some cleaning needed in kitchen and bathrooms, Carpets will need to be done again, floors dirty” was not written anywhere on the Condition Inspection Report when it was signed by the female tenant.

The landlord submits that he and the female tenant discussed the condition of the rental unit during the inspection. He advised that while he cannot determine the cost of cleaning the rental unit and carpet at the time of the move out inspection, and as such his practice is to have the tenants sign the authorization to retain the security deposit as noted above.

The tenants submit that they did not know how the landlord determined to retain any amount because the landlord did not send the tenants a copy of the Condition Inspection Report until after the tenants contacted the landlord’s agent to discuss why the landlord had deducted so much. The tenants submit they received the Report the week of August 19, 2015 but were not sure. The landlord’s agent was not sure when it was sent out but believed it was sent “around the same time as the cheque was sent”.

The tenants also seek compensation for various “incidentals” for which they were promised compensation. The tenants did not provide any written agreements or receipts in support of this part of their claim.

Specifically, the tenants seek the following compensation:

Description	Amount
Kitchen tap aerator	\$30.00
4 keys cut	\$27.00
2 curtain rods	\$23.49
Tube beige paint	\$6.90
2 brackets for a closet	\$2.00
1 scraper for paint stain	\$7.20
Garbage can – kitchen sink	\$15.00
Total	\$115.59

The tenants submit that they had an agreement with the landlord (owner) to be reimbursed for these costs that occurred throughout the tenancy. However the landlord’s agent was unaware of any such agreements and confirmed that the tenants had never provided him or the landlord with any receipts for the noted items.

Analysis

Section 38(1) of the *Act* states that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant’s forwarding address in writing, either return the security deposit in full less any mutually agreed upon amounts (in writing) or file an

Application for Dispute Resolution seeking to claim against the deposit. Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit

I prefer the landlord's testimony that the Condition Inspection Report did include that the tenant agreed to a deduction from the security deposit for the costs of cleaning and carpet cleaning. If the tenant was not agreeing to any deductions from either the security deposit or the pet damage deposit then there would be no reason to sign this section of the Report. I find it unlikely, on a balance of probabilities, that a tenant would sign agreeing to a deduction with absolutely nothing written into the space provided for an amount.

Section 38(4) stipulates a landlord may retain an amount from a security deposit or a pet damage 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. I find the language in the legislation is very specific that the parties must agree to an **amount** to be deducted and not simply an agreement that the landlord can deduct some money from the deposits for a specific reason.

Therefore, as a specific amount to be withheld was not agreed upon, I find the landlord did not have authority under Section 38(4) to withhold any amounts from the security deposit. As such, pursuant to Section 38(1) the landlord must have either returned the full deposit or filed an Application for Dispute Resolution seeking to claim against the deposit within 15 days of the end of the tenancy and receipt of the tenants' forwarding address.

From the testimony of both parties I find the tenancy ended on July 29, 2014. Based on the Condition Inspection Report I find the landlord received the tenants' forwarding address on July 29, 2014. As such, I find the landlord was required to return the deposit less any mutually agreed upon amounts or file a claim against the deposit no later than August 13, 2014.

Based on the landlord's agent's testimony I find the landlord did not submit an Application for Dispute Resolution as of the date of this hearing. Further, I find the landlord did return to the tenants \$45.00 of the security deposit. As a result, I find the landlord has failed to comply with Section 38(1) of the *Act* and the tenants are entitled to double the amount of both deposits pursuant to Section 38(6), less the amount of \$45.00 they have already received.

The be successful in a claim for loss or damages resulting from a violation of the *Act*, regulation or tenancy agreement the party making the claim has the burden of providing sufficient evidence to establish:

1. That damage or loss exists;
2. That the damage or loss has resulted from a violation of the *Act*, regulation or tenancy agreement;

3. The value of the damage or loss; and
4. The steps taken, if any, to mitigate the damage or loss.

When both parties to a dispute provide equally plausible versions of events the party with the burden of proof must provide additional evidence to corroborate their claim. In the case before me, I find the landlord disputes that there was any agreement between the parties that the tenants would be reimbursed for any incidentals.

As such, in the absence of any corroborating evidence I find the tenants have failed to establish that the landlord had agreed to any reimbursements or that the landlord has breached the *Act*, regulation or tenancy agreement warranting compensation for any incidentals.

Based on this I dismiss this portion of the tenant's claim for compensation.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,605.00** comprised of double the amount of the security deposit and pet damage deposit held; less the \$45.00 already returned by the landlord; and the \$50.00 filing fee the tenants paid 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.

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: March 23, 2015

Residential Tenancy Branch

