Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing convened as a result of cross applications. In the Landlords' Application for Dispute Resolution they sought authorization to keep all or part of the security deposit, a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee. The Tenants sought return of double the security deposit and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlord entitled to monetary compensation from the Tenants?

2. Are the Tenants entitled to monetary compensation from the Landlords?

3. Should either party recover the fee paid to file their application?

Background and Evidence

M.K. testified that they moved into the rental unit in February of 2008. Prior to this, they resided in another unit in the same rental building. M.K. stated that the original security deposit paid was $325.00, which she stated was half a month's rent. She further testified that when they moved "upstairs" the Landlord collected a full month's rent in the amount of $775.00, as security

deposit, such that the Landlord held $1,100.00 as a security deposit. The Tenants did not provide any proof of either payment.

M.K. testified that when they moved upstairs, they did not enter into a new tenancy agreement, nor did the Landlord perform a Move In Condition Inspection.

M.K. testified that they moved out of the rental unit on October 30, 2014. She stated that in September of 2014 she gave the Landlord their forwarding address on a piece of paper. She stated that she provided the forwarding address a second time, also on a piece of paper in October of 2014. She did not give a specific date for either time nor did she submit any evidence to support her claims. M.K. further testified that she sent in proof to the Branch that they provided the Landlords with their forwarding address. I confirmed with the Tenants that no such evidence was received.

M.K. also testified that she took photos of the rental unit when she left, but she did not provide any photos as she was told by the Branch they didn't need to.

M.K. further testified that she was not provided an opportunity to do a Move Out Condition Inspection. As the Landlord had submitted a Move Out Condition Inspection Report, I asked the Tenant if she participated in the inspection and received the report. She responded that the first time she saw the Move Out Condition Inspection Report was when she received the Landlords' evidence package.

M.K. confirmed they did not sign over any portion of the security deposit.

The Landlord, L.L., testified that the Tenants originally moved into unit #1 in the rental building on January 13, 2006. The Landlord submitted in evidence a copy of the tenancy agreement for the first unit in which clause #6 notes that on December 30, 2005 the Tenants paid $325.00 as a security deposit.
The L.L. further testified that when the Tenants moved to the current rental unit, they paid an additional $225.00 such that the Landlord held a total of $550.00, which is half of the current monthly rent.

The Landlord confirmed that when the Tenants moved to the current rental unit that she did not perform a Move In Condition Inspection, as she trusted the Tenants.

Neither party submitted a copy of the residential tenancy agreement for the subject rental unit. The Landlords introduced in evidence a copy of a residential tenancy agreement for unit #2, but for different occupants. L.L. stated that she could not find the agreement for the tenancy at issue but that aside from the security deposit, all the clauses remained the same for the subject rental unit.

When asked if she did a report when the tenancy ended, L.L. responded that she did an inspection "after the fact, but not with the Tenants". She testified that the Tenants left a week before the tenancy was to end and they did not return. She stated that she called the Tenants on numerous occasions about doing a "walk through" but they did not respond. In support of their claims as to the condition of the property, the Landlords also submitted a letter from their new tenants, A.F. and N.G., which was sent to the Landlords by email on January 7, 2015.

When asked if she received the Tenants forwarding address in writing, L.L. testified that she received their address when she received notice of their dispute, but that at no time prior did she have their address. The Landlord submitted the letter she received from the Tenants which was post marked December 24, 2014 and upon which she wrote "Date we received written notice of Tenants' change of address, and the Notice of a dispute resolution hearing." In the Landlords' written submissions they claim this letter was received on December 30, 2014.

The Landlords applied for Dispute Resolution on January 12, 2015.

The Landlords sought a Monetary Order in the amount of $1,477.91 for the following expenses:

Professional carpet cleaning	$336.84
Underpad replacement due to cat order	$467.04
Repair to dishwasher	$234.24
Blinds repair	$32.00
Propane	$357.79
Filing fee	$50.00
TOTAL	**$1,427.91**

Submitted in evidence were copies of receipts for the above expenses.

The Landlords also provided written submissions wherein they alleged the following:

- The Tenants paid to fill up the propane tank at the end of their occupation of unit #1 and that they agreed to fill up the tank when they vacated unit #2.

- The monthly rent was $1,100.00 and when the Tenants moved from unit #1 to unit #2 they provided a further $225.00 to ensure their security deposit was $550.00 which was also equal to half a month's rent.

- The Tenants did not provide written notice to end their tenancy.

- The Tenants did not provide their forwarding address in writing.

- The carpet had a large stain and emanated a strong order of cat urine.

- The Tenants did not professionally clean the carpets and their efforts worsened the smell of urine as the excess water in the run enhanced the smell.

- The underlay was replaced at the recommendation of the professional cleaner, because the smell was not able to be removed.

- One of the blinds needed to be repaired.

- The Tenants asked about their security deposit by phone. The Landlords informed them that they intended to use part of the deposit to pay for the propane as well as the repairs.

L.L. testified that when the Tenants rented the first unit, they agreed to fill the propane tank. She further testified that she had an agreement with the Tenants that they would fill up the propane tank at the end of their tenancy for the subject rental unit, and that the Tenant, R.K., agreed that the propane cost was to be taken from their security deposit.

The Tenants deny such an agreement with respect to the propane tank exists.

Analysis

After careful consideration of the relevant evidence before me, and on the balance of probabilities, I find as follows.

Neither party submitted proof of payment of the security deposit for the subject rental unit. The onus of proof was on the Tenants to prove that the Landlords increased the security deposit to a full month's rent. As the Landlords accepted the allowable amount in the first tenancy, I find it unusual that the Landlords would have increased the security deposit to a full month's rent. The Landlord submitted the rental agreement for the first tenancy which clearly shows the Landlord was collecting half a month's rent. As a result, and on the balance of probabilities I find that the Tenants have failed to prove their claim that the Landlord holds $1,100.00 as a security deposit and I further find that the Landlords hold $550.00.

I do not accept the Tenants' evidence that they provided the Landlord their forwarding address in writing in September and October 2014. Rather, I accept the evidence of the Landlords that the first time they were aware of the Tenants forwarding address was when they received the Tenants' application materials. The letter is post marked December 24, 2015 and pursuant to section 90 of the Act, is deemed served five days later; namely December 29, 2015. As this time period includes both Christmas Day and Boxing Day, I accept the Landlords' evidence that they received the Tenants' forwarding address on December 30, 2015.

In any event, the Landlords, in failing to perform a Move-in Condition Inspection, extinguished their right to claim against the security deposit pursuant to section 24(2) of the Act. As such, they had no right to claim against the security deposit when making their application on January

12, 2015. Pursuant to section 38(6)(b) the Landlord must repay double the security deposit, namely $1,100.00.

I accept the Landlords' evidence with respect to the condition of the rental unit at the end of the tenancy. I am persuaded by the evidence of A.F. and N.G., the new occupants of the rental unit, as to their observations of the rental unit when they first viewed the property as well as the receipts submitted by the Landlord which further confirm the condition of the property as requiring repair and cleaning.

The Tenants alleged that the urine smell in the rental unit was from the previous tenants' dog, yet they did not provide any proof that they raised this issue with the Landlords during their tenancy. I do not accept the Tenants' testimony that staff at the Branch told them not to file photos as evidence as such information is contrary to the Rules and simply not believable. Further, the Tenants received a notice of Dispute Resolution Hearing for both application, and upon which the following is clearly noted:

> **GENERAL INFORMATION about your responsibility and the hearing**
>
> 1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.

The Tenants also did not dispute the specifics of the Landlords' monetary claim, and in particular, did not dispute the Landlords' claim regarding the carpet, dishwasher and blinds repair, nor the did they dispute the Landlords' request for compensation for the cost to refill the propane tank.

I find that the Landlords have met the burden of proving their claim for a Monetary Order for compensation for damages or loss and award them $1,427.91 for the following expenses:

Professional carpet cleaning	$336.84
Underpad replacement due to cat order	$467.04
Repair to dishwasher	$234.24
Blinds repair	$32.00
Propane	$357.79
TOTAL	**$1,427.91**

The parties, having achieved divided success, shall not recover the fees paid to file their applications and those claims are therefore dismissed.

As I have also awarded the Tenants the sum of $1,100.00, the amounts are to be offset against one another such that the Tenants shall pay the Landlord the sum of $327.91. The Landlord is granted a Monetary Order in this amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlords extinguished their right to claim against the security deposit and as such must pay the Tenants double the security deposit pursuant to section 38(6)(b). The Landlords' claim for monetary compensation from the Tenants is granted. The amounts awarded to each party are offset against one another such that the Tenants shall pay $327.91 to the Landlord and the Landlord is granted a Monetary Order for this amount. Neither party shall recover the fee paid to file their application.

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 02, 2015

Residential Tenancy Branch