



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 the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference and gave testimony. Both parties confirmed receipt of the Notice of Hearing Package and the submitted documentary evidence of the other party.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit and for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security and pet damage deposits?

Are the tenants entitled to a monetary order for the return of double the security and pet damage deposits and recovery of the filing fee?

Background and Evidence

This tenancy began on April 1, 2013 on a fixed term tenancy ending on March 31, 2014 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement dated March 5, 2013. The monthly rent was \$825.00 payable on the 1st day of each month and a security deposit of \$412.50 and a pet damage of \$412.50 were paid on March 5, 2013.

Both parties have confirmed that the landlords have returned \$495.30 to the tenants retaining \$329.70 as the disputed portion of the landlords' claims against the security and pet damage deposits.

Both parties agreed that the tenancy ended on August 30, 2014 and that the tenant provided their forwarding address in writing to the landlord on August 30, 2014. A condition inspection report for the move-in was completed by both parties on March 30, 2013 and a condition inspection was made by both parties on August 31, 2014. The tenants have disputed the contents of the move-out inspection report. The tenants have claimed that the condition inspection report for the move-in was altered, but have provided no evidence or basis for this claim.

The landlords seek a monetary claim of \$279.70 which consists of;

- \$100.00 for cleaning;
- \$46.35 for repair to the yard irrigation system; and
- \$133.35 for cleaning and pet sanitizing of the carpets.

The tenants seek a monetary claim of \$1,650.00 which is the return of double the \$412.50 security and the \$412.50 pet damage deposits.

The landlords claim that the tenants had not adequately cleaned the rental premises at the end of tenancy and that the landlords had to clean the rental premises for 5 hours. The landlord relies on the submitted photographs and a copy of the incomplete condition inspection report for the move-out. The tenant, S.A. disputed the landlords' claims stating that the rental unit was left clean at the end of the tenancy.

The landlords claim that the tenants failed to have the carpets professionally cleaned at the end of the tenancy requiring them to hire a professional carpet cleaner and incurring an expense of \$133.35 as shown by the submitted copy of the certificate of completion dated September 4, 2014. The certificate notes a description /scope of work that states,

1 room bedroom, 1 sanitizer, fuel charge and urine treatment. The tenants disputed this claim stating that the carpets were cleaned using an industrial carpet cleaner. The landlords disputed this claim stating that the carpets were not adequately cleaned requiring professional cleaning. The tenants have provided photographs of one of the tenant's father using an industrial carpet cleaner. The landlord has submitted photographs of the carpets in the rental unit. The tenants refer to the addendum to the signed tenancy agreement which states,

The carpets must be professionally cleaned by the tenant at least once per year and at end of tenancy.

The tenants stated that under this addendum condition there are no requirements to have a professional contractor clean the carpets, but that a professional cleaner (machine) is all that was required. The landlord disputed this and refers to the signed "Pet Contract" which states,

The tenant agrees that the carpets will be deep cleaned by a professional cleaner who specializes in pet cleaning upon termination of tenancy.

The landlord stated that she does not dispute that the tenants used a professional grade cleaner, but that the cleaning was not adequate. The landlord noted that the certificate of completion by the carpet cleaner states,

Heavy Soiling in Traffic areas, Pet hair Smell Evident, Hair Oils, Wicking occurring during drying, second maybe needed also urine smell evident.

The landlords also claim that the tenants' dog had dug a trough down to the irrigation pipe in the yard which caused some damage to the sprinkler head. The landlords have submitted a copy of a paid invoice dated August 2, 2014 for \$46.35 for work performed by a neighbor who is a professional landscaper. The tenants disputed this claim stating that they were never informed about this damage or given an opportunity to resolve it. The landlord disputed this stating that the tenants were notified on August 6, 2014. Both parties confirmed that the tenants were away during the August 2014 long weekend and that the repairs were completed before the tenants returned. The tenants stated that had they been given an opportunity, they could have repaired the irrigation sprinkler at no cost through one of their friends.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage/loss and that it was beyond reasonable wear and tear.

Although both parties have provided photographs of the rental unit at the end of the tenancy, I find that I cannot use them as the photographs do not provide sufficient details nor are they of similar angles of the areas in dispute for comparison. However, the landlords' photographic evidence does provide a comparison as the landlords have provided before and after photographs of the same areas at the end of tenancy with the same angles for the disputed areas. These photographs do show varying degrees of areas that require cleaning. The landlord has also submitted a completed condition inspection report for the move-in and an incomplete condition inspection report for the move-out which supports the landlords' claims. This is further supported by the landlord's submitted certificate of completion for carpet cleaning notations that the carpet required additional cleaning. I also find in reviewing the addendum conditions referred to by the tenants that the "Pet Contract" provides more detail and clarity. During the hearing the landlords provided direct testimony that the addendum condition was for those tenancies without a pet. The "Pet Contract" was entered into by both parties after the signed tenancy agreement on the same date. On this basis, I find on a balance of probabilities that the landlords have established a claim for the entire claim filed. The landlords have established a total claim of \$279.70.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

In this case the landlords have filed for dispute resolution to retain a portion of the security and pet damage deposits on September 11, 2014. Both parties have confirmed that the tenants ended the tenancy on August 30, 2014 and have provided their forwarding address in writing to the landlords on August 30, 2014. I find that the landlord has complied with the *Act* by making an application for dispute within the 15 day time frame. Both parties have confirmed in their direct testimony that the landlords returned \$495.30 to the tenants. Based on the above, I find that the tenants are not

entitled to the return of double the pet damage and security deposits as per section 38 of the Act.

The landlords have established a monetary claim of \$279.70. I also grant the landlords the recovery of the \$50.00 filing fee having been successful in their application.

Conclusion

The landlords' application is granted. The landlords have established a total monetary claim of \$329.70 which consists of the \$279.70 claim in damages/loss and recovery of the \$50.00 filing fee.

I order that the landlord retain remaining \$329.70 pet damage and security deposits currently held in trust in satisfaction of this claim.

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 13, 2015

Residential Tenancy Branch

