



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF
 MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for a monetary order for damage to the unit, site or property; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords.

Both landlords and the tenant attended the hearing and each gave affirmed testimony. The landlords also called one witness who gave affirmed testimony.

During the course of the hearing it was determined that the landlords served the tenant with the original evidence filed with the landlords' application, but did not provide the tenant with any subsequent evidence that was provided to the Residential Tenancy Branch. The Rules of Procedure require parties to exchange all evidence that they intend to rely on. The parties did not wish an adjournment and the hearing proceeded. The subsequent evidence is therefore not considered in this Decision.

The parties were given the opportunity to question each other and the witness about the admissible evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

- Has the tenant established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?

Background and Evidence

The first landlord testified that this month-to-month tenancy began on September 1, 2012 and ended on January 31, 2015. Rent in the amount of \$1,100.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$550.00 and no pet damage deposit was collected. A copy of the tenancy agreement has been provided. At the beginning of the tenancy or within a month after the tenancy began the parties orally agreed to rental payments being made bi-weekly in the amount of \$508.00.

The landlord further testified that a move-in condition inspection report had been completed by the parties at the beginning of the tenancy, and a copy has been provided. The landlord does not know why it isn't signed by the tenant. The parties sent emails back and forth about when the move-out condition inspection could take place and agreed to January 31, 2015 at 1:00 p.m. The tenant was going to be out of town for any other time the parties discussed. On January 30, 2015 the tenant sent an email requesting that the landlord complete the inspection without the tenant present and asking that a copy be sent to the tenant. The landlord completed the inspection report and sent a copy to the tenant, but does not recall when. A copy of that report has also been provided.

The landlords have provided a Monetary Order Worksheet setting out claims as against the tenant and some of the claims show an estimated amount.

The landlord further testified that during the tenancy the tenant put a dead bolt on a bedroom door without the landlords' knowledge. The landlords had a contractor remove it, sand, and fill the wood and repaint. The labour and materials amounted to \$115.00, although the Monetary Order Worksheet shows an estimate of \$150.00.

The tenant left the rental unit without cleaning the carpets and left stains on the stairs and main bedroom. All carpets were clean at the commencement of the tenancy. The landlords hired a professional cleaner at a cost of \$168.00. The Monetary Order Worksheet shows an estimate of \$150.00.

The landlord also testified that the rental unit required cleaning at the end of the tenancy and hired a cleaning company who spent 2 ½ hours cleaning the stove, bathroom floors, walls left with rubbing marks or stains, and the dishwasher. The cleaning

company charged \$52.50 which the landlords claim against the tenant. A copy of an invoice dated February 4, 2015 has been provided.

The landlords also claim \$30.21 for a broken toilet seat clamp. One side of the clasp that holds the seat to the toilet had broken off, but it wasn't like that at the commencement of the tenancy. A copy of the receipt has been provided.

The landlords also claim \$20.00 which was the exact cost for purchasing a new light fixture to replace a missing fixture in the 2nd bedroom. The fixture was there at the beginning but not at the end of the tenancy. No receipt has been provided.

The tenant also told the landlords in the email of January 30, 2015 that the post office key would be left under the mat of the rental unit, but it was not returned to the landlords or found under a mat. The landlords claim \$65.89 for its replacement however the Monetary Order Worksheet shows a claim of \$50.00 as an estimated cost.

The landlords received the tenant's forwarding address in writing by email shortly after the tenancy ended. The tenant vacated the rental unit on January 30, 2015, and the landlords returned \$97.26 of the security deposit to the tenant on February 12, 2015.

The second landlord testified that the lock on the door of the bedroom was the big issue left by the tenant. It would have been simple to get a lock on a doorknob rather than damaging the frame and the door.

The landlords' witness testified that he was hired by the landlords to take on property management of the rental unit after this tenancy had ended.

The witness was at the rental unit prior to move-out for showings, and after the tenant moved out the landlords wanted the witness to look at the condition of the rental unit because new tenants were moving in the next day. The witness testified that he went to the rental unit on January 31, 2015 and took photographs. There was no evidence of carpets being professionally cleaned. The witness arranged for that as well as for cleaning prior to new tenants moving in, however the carpets didn't get cleaned until after new tenants had moved in.

The tenant testified that the landlords had told the tenant that they intended to sell the rental unit and the tenant didn't want to remain with realtors and prospective buyers walking through the rental unit.

The emails about availability to conduct the move-out condition inspection report advised the landlords that the tenant would be out of town on January 31, 2015, and the landlords did not offer a second opportunity.

The tenant agrees that on February 19, 2015 the tenant received the cheque for \$97.26 but never received a copy of the move-out condition inspection report.

The tenant denies that a dead-bolt was attached to the door or door frame; the tenant's daughter installed a sliding type of lock without the tenant's knowledge. The lock was similar to one for a gate.

The tenant also testified that the carpets were not cleaned at the beginning of the tenancy. The tenant rented a steam cleaner and cleaned the carpets on January 28 or 29, 2015, but did not get a receipt.

The tenant also testified that she cleaned the stove and has provided photographs taken on January 30, 2015 later in the day. The floor in the bathroom attracted hair, which is normal wear and tear. Similarly, the toilet seat had a plastic hinge with pins that slide and the left one wouldn't stay in one place, but wasn't broken. The tenant would move it back into place during the tenancy, and testified that it is also normal wear and tear.

With respect to the post office key, the tenant had her daughter drop it off under the door mat on her way home from work, but is not certain if that happened.

The tenant also testified that the landlords collected more money than they were entitled to under the tenancy agreement. The agreement was \$1,100.00 per month, and the tenant made 63 bi-weekly payments of \$508.00, totaling \$32,004.00. The tenancy lasted 29 months and at \$1,100.00 per month the rent paid should have been \$31,900.00 and the tenant claims the difference of \$104.00.

Analysis

Where a landlord makes a monetary claim against a tenant for damages, the onus is on the landlord to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce the damage or loss suffered.

Also, the *Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy.

The tenant does not deny that a lock was placed on a bedroom door. The landlords' Monetary Order Worksheet estimates the cost to be \$150.00 but one of the landlords testified that the actual cost was \$115.00, and I accept that.

With respect to the tenant's claim that the carpets were not clean at the commencement of the tenancy, the regulations to the *Residential Tenancy Act* state that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit. I note that the tenant did not sign the move-in condition inspection report, however the landlord testified that the inspection was completed by both parties and the tenant did not dispute that. Therefore, I accept the move-in condition inspection report showing that carpets were not soiled at the beginning of the tenancy. The landlords' witness testified that upon viewing the rental unit on January 31, 2015 there was no evidence of the carpets being professionally cleaned. If the tenant had cleaned the carpets, certainly there would be some evidence of that, but the tenant has not provided any nor did the witness see any. I have also reviewed the photographs provided by the tenant and I am satisfied that the carpets required cleaning at the end of the tenancy. The landlords' Monetary Order Worksheet estimates the cost to be \$150.00 but the landlord testified that the actual cost was \$168.00. There is no evidence of the higher cost, and I accept the landlords' claim of \$150.00.

The landlord testified that the rental unit required cleaning at the end of the tenancy and specified that the stove, walls and dishwasher were not cleaned and has provided a copy of an invoice that shows 2 ½ hours for work that I find is consistent with the move-out condition inspection report. The tenant has provided photographs that show a reasonably clean rental unit with the exception of carpet cleaning. A tenant's responsibility is to leave a rental unit reasonably clean, not in a pristine condition that a landlord may want for future tenancies. After reviewing the evidence I find that the landlords have failed to establish that the rental unit was not reasonably clean at the end of the tenancy, with the exception of carpet cleaning and the landlord's claim for \$52.50 is dismissed.

The move-in condition inspection report shows no damage to the toilet seat. The landlords have provided evidence of the cost to repair it and I find that the landlords are entitled to recovery of \$30.21.

I am not satisfied that the landlords have established the cost of a new light fixture.

The tenant does not deny that she did not personally return the post office key to the landlords but instructed her daughter to do so, and the landlords have testified that no key was received. The landlords' Monetary Order Worksheet claims an estimate of

\$50.00 and the landlord testified that the actual cost was \$65.89. I find that the landlord is entitled to the lower cost.

The landlord also testified that the parties emailed back and forth about a date to complete the move-out condition inspection and I accept that the tenant agreed in writing that the landlords complete it in the tenant's absence, based on the copies of emails provided for this hearing. However, the regulations to the *Residential Tenancy Act* also states that a landlord must provide the tenant with a copy of the report within 15 days after the later of the date the report is completed and the date the landlord receives the tenant's forwarding address in writing. The landlord testified that a copy was sent to the tenant along with a portion of the security deposit. However, the tenant disputes that testimony, stating that the tenant received the cheque for the security deposit but not a copy of the move-out condition inspection report. Section 36 (2) of the *Act* specifically states:

Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I have no reason to disbelieve either party, and therefore I decline to find that the landlords' right to claim against the security deposit for damages is extinguished.

The tenancy ended on January 31, 2015, and the landlords returned \$97.26 of the security deposit to the tenant on February 12, 2015 and filed the application for dispute resolution on February 13, 2015, both of which are within the 15 days required by the *Act*. Having found that the landlords have established a claim for damages in the amount of \$115.00 for repairs to the door, \$150.00 for carpet cleaning, \$30.21 for toilet repair, and \$50.00 for the post office key, for a total of \$345.21, and the landlords currently hold \$452.71 of the security deposit, I find that the tenant is entitled to the difference of \$107.50.

With respect to the tenant's testimony that rent was over-paid by \$104.00 over the course of the tenancy, the tenant testified that she made 63 bi-weekly payments of \$508.00 totalling \$32,004.00, and at \$1,100.00 per month, the total the landlords ought to have collected is \$31,900.00. The landlord testified that at the beginning of the

tenancy or within a month after the tenancy began the parties orally agreed to bi-weekly rental payments in the amount of \$508.00. The tenancy began on September 1, 2012 and ended on January 31, 2015. The parties agreed at the time that bi-weekly payments would amount to \$508.00 because \$1,100.00 multiplied by 12 months, and divided by 26 bi-weekly payments amounts to \$507.69. Therefore, I find that the tenant has overpaid rent by \$.31 per bi-weekly payment from September 1, 2012 to January 31, 2015, being 63 payments totalling \$19.53.

Since both parties have been partially successful with the application, I decline to order that either party recover the filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$127.06.

This order is final and binding and may be enforced.

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 30, 2015

Residential Tenancy Branch

