Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord applied on October 23, 2014 for:

1. An Order to retain all or part of the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants applied on April 14, 2015 for:

1. An Order for the return of double the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to retain all or part of the security deposit?

Is the Tenant entitled to return of double the security deposit?

Background and Evidence

The following are undisputed facts: The tenancy started on September 1, 2013 and ended on September 28, 2014. The Tenant provided its forwarding address in writing on move-out. At the outset of the tenancy the Landlord collected $600.00 as a security deposit. Although the Parties went through the unit together at move-in and move out, no condition report was completed. No problems were raised during the walk through at the end of the tenancy other than the removal of clippings and garbage. The Landlord agreed to bring a container and the Tenants agreed to fill it at the end of the tenancy. The Tenants did not fill the container at the

end of the tenancy. A portion of the clippings were from the previous tenancy. The Tenant did not clean the freezer after defrosting it at move-out.

The Landlord states that one person was paid to clean the freezer that was left with water in the bottom and to fill all the containers. The Landlord states that they were charged $25.00 per hour for three hours. No bill or invoice for these costs was provided by the Landlord. The Landlord states that it likely took 2.5 hours to fill one container and another 0.5 hours to clean the freezer. The Landlord also claims $100.00 to deliver and pick up the container. The Tenant states that they only agreed to fill the container with some amount as most of it was from the previous tenancy.

The Landlord states that the Tenants took a log splitter that had been provided with the unit. The Landlord states that this was not noted during the walkthrough which was done quickly. The Landlord states that when the new tenant arrived the next day it was determined that the log splitter was gone. The Landlord states that the splitter was 2 or 3 years old and that it cost $365.00. The Landlord states that no used splitter has been found and that as this item is included with the new tenancy the Landlord will be replacing it whether successful with her claim or not. The Landlord claims $410.00. The Landlord provides a print out an online sale of a new splitter for this amount.

The Tenants deny taking the splitter and state that the splitter was seen in the shed by the Tenants on September 28, 2015. The Tenant states that their wood was also in the shed and that this wood was removed. The Tenant states that although their new rental unit has a wood burning fireplace, it is mostly decorative as it throws no heat and is only used occasionally. The Tenant states that at the onset of the tenancy the splitter had been left outside and the Tenants kept it secured in the shed.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the

claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Based on the undisputed facts that the Tenants left behind clippings and garbage at the end of the tenancy and failed to clean the freezer after being defrosted, I find on a balance of probabilities that the Tenants failed to leave the yard and unit reasonably clean. Given that at least 1/3 of the clippings were left by the Tenants and considering that the Tenants agreed to clean up at least their portion of the clippings by placing them in the container, I find that the Landlord has substantiated that the Tenant is responsible for a portion of the cost to the Landlord. Given the undisputed facts that the freezer required cleaning, I find that the Landlord has also substantiated that the Tenant is responsible for these costs. As the amount claimed is reasonable, I find that the Landlord is entitled to the **$75.00** claimed for cleanup.

As there was no agreement for the Tenants to pay for the container delivery and pickup and considering the Landlord would have incurred this cost regardless of the Tenant's portion of clippings, I find that the Landlord has not substantiated that the Tenants are responsible for this cost and I dismiss the claim for $100.00.

I find the Landlord's evidence in relation to the missing log splitter to be credible and convincing. The Tenant's denial of taking it does not hold the same ring of truth. I find therefore on a balance of probabilities that the Tenants failed to leave the splitter at the end of the tenancy. Although the Landlord claims the cost for a new splitter, the Landlord has only shown the loss of a used splitter and I consider the undisputed evidence of the Tenant that it had previously been left outside to indicate additional limited value. As a result I find that the Landlord is only entitled to a portion of the original cost and I consider that a half portion would be reasonable in the circumstances. I find that the Landlord is therefore entitled to **$182.50** (365/2).

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the Landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application within 15 days after September 28, 2014 and as the Landlord did not return the security deposit,

I find that the Landlord must pay the Tenant double the security deposit of $600.00 plus zero interest in the amount of **$1,200.00**.

As each Party's applications had merit, I set their entitlement to the recovery of the filing fees against each other. Deducting the Landlord's total entitlement of **$257.50** from the Tenants' entitlement of **$1,200.00** leaves **$942.50** owed to the Tenants.

Conclusion

I Order the Landlord to retain $257.50 from the security deposit plus interest of $600.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **$942.50**. If necessary, this order may be filed in the Small Claims Court and 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: May 14, 2015

Residential Tenancy Branch