



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, MND

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of double the deposit. Both parties confirmed that they received each other's Notice of Hearing letter, Application for Dispute Resolution and evidence. I am satisfied that the parties have exchanged said documents in accordance with the service provisions of the Act and the Rules of Procedure.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence and Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenancy began on September 12, 2012 and ended on September 14, 2014. The tenants were obligated to pay \$1400.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$700.00 security deposit and a pet deposit of \$100.00. A condition inspection report was not conducted at move in but was conducted at move out.

I address the landlord's claims and my findings around each as follows.

Landlords First Claim – The landlord is seeking \$703.43 for labour and paint supplies to paint the living room, bedroom and dining room. The landlord stated that the paint was five years old at the time of move out and that the tenants were responsible for the costs to repaint the unit. The landlord provided post tenancy photos and a receipt.

The tenants dispute this claim. The tenants advocate submits that the paint had exceeded the useful life as listed in the Residential Tenancy Policy Guidelines and therefore the landlord should fully expect to incur that cost. In addition, the advocate submits that the paint suffered only from the usual wear and tear associated with a tenancy and that there was not any extreme damage to any of the walls.

I agree with the tenants advocate, the evidence as presented by the landlord shows that the unit appeared to have the wear and tear of a tenancy. In addition, the useful life of paint as per the Residential Tenancy Policy Guideline is four years. In the landlords own testimony she stated that paint was five years old at move out. The landlord should have a reasonable expectation that the unit would require painting after five years and that she would be responsible for that cost. Based on the above I dismiss this portion of the landlords' application.

Landlords Second Claim – The landlord is seeking \$313.88 for the cost of installing new laminate flooring, mouldings and caulking. The landlord stated that the tenants damaged the existing carpet in the bedroom to the point where it needed to be replaced. The landlord stated that tenants caused excessive. The landlord provided post tenancy photos and a receipt.

The tenants dispute this claim. The tenants advocate submits that the tenants pointed this damage out to the landlord at move in and were assured that it wouldn't be an issue. In addition, the advocate submits that without the condition inspection report there is no way of knowing the condition of the carpet at move in.

It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. Although the

landlord provided photos at the end of the tenancy, they did not provide photos at the start of the tenancy. Also, the damage as claimed by the landlord does not appear to be so severe that the carpet needed to be replaced. The landlord has not provided sufficient evidence to support this portion of her claim and I therefore dismiss this portion of their application.

Landlords Third Claim – The landlord is seeking \$33.58 for curtains. The tenants agree with this claim. Based on the agreement of the tenants I find that the landlord is entitled to \$33.58.

Landlords Fourth Claim – The landlord is seeking \$195.00 for move out cleaning. The landlord stated that the tenants left the unit dirty and far from being suitable for showing to potential renters. The landlord provided photos and a receipt to support her claim.

The tenants dispute this claim. The tenants advocate submits that the tenants spent almost three full days cleaning the unit. The advocate submits that the unit was left reasonably clean and that the landlord is holding the tenants to a higher standard than required. The advocate submits that even if I find in favour of the landlord, the amount sought by the landlord is too much and that 6.5 hours of cleaning is unreasonable.

The tenants are responsible for leaving the unit clean at the end of the tenancy as per the Residential Tenancy Policy Guidelines. Although the advocate submits that the tenants have left the unit reasonably clean as required, I do not agree. Based on the evidence of the landlord I find that the tenants did not clean the unit to a reasonable level and that the landlord is entitled to \$195.00.

I address the tenants' application and my findings as follows.

Tenants First Claim – The tenants are seeking \$5.00 for a bank charge they incurred as a result of the landlords actions. The advocate submits that the landlord originally issued a cheque returning the deposits to the tenants but then changed her mind and put a stop payment on that cheque.

The landlord stated that she did not dispute the advocate's submission but it was due to her feeling that the amount she returned was too much and she decided arbitration was the best route to resolve the matter.

Based on the landlords own testimony acknowledging her actions, I find that the tenants are entitled to \$5.00.

Tenants Second Claim – The tenants are seeking the return of double their security and pet deposit. The tenants advocate submits that although the landlord filed for dispute resolution within fifteen days of receiving the tenants forwarding address, the landlord had extinguished their right to make a claim against it for not conducting the move in condition inspection report in writing.

The landlord disputes this claim. The landlord stated that the tenants left the unit dirty and caused damage and seeks to recover those costs.

Residential Tenancy Policy Guideline addresses this issue as follows:

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, **retains the following rights:**
- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
 - to file a claim against the deposit for any monies owing for other than damage to the rental unit;
 - to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy
 - **to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.**

Based on the above guideline and that the landlord filed within the fifteen days of receiving the tenants forwarding address in writing, I find that the tenants are not entitled to the return of double the security deposit, but are entitled to the remainder of their original deposits of \$800.00.

The landlord has been partially successful in their application and has been granted an amount of \$228.58. The tenants have been partially successful in their application and have been granted an amount of \$805.00. I apply the landlords \$228.58 against the tenants' award of \$805.00 leaving an amount payable to the tenants of \$576.42

As neither party has been completely successful in their application I decline to make a finding in regards to the filing fee and each party must bear that cost.

Conclusion

I grant the tenants an order under section 67 for the balance due of \$576.42. 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 21, 2015

Residential Tenancy Branch

