



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenants was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on February 23, 2015. I find that the Application for Dispute Resolution filed by the landlord was sufficiently served on tenants by mailing, by registered mail on April 10, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order for double the security deposit?
- b. Whether the tenants are entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a two year fixed term written tenancy agreement that provided that the tenancy would start on March 1, 2012 and end on March 31, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$2300 per month payable on the first day of each month. The tenants paid a security deposit of \$1150 on March 31, 2012.

In November the tenants gave the landlord notice they were vacating the rental unit at the end of January 2015. The tenants vacated on January 31, 2015 and new tenants move into the rental unit starting February 1, 2015. The tenants and an agent for the landlord conducted a Condition Inspection at that time. The tenants testified he agreed with the landlord that \$35 could be deducted from the security deposit to clean the oven.

On February 1, 2015 the tenants tenant sent an e-mail to the landlord which contained their forwarding address. At the hearing the landlord acknowledged receipt of that e-mail.

The tenants and the agent for the landlord conducted an inspection of the rental unit prior to the tenants taking possession. The tenants were not provided with a copy of the Condition Inspection Report. The landlord testified she does not have a copy of it. She testified her agent passed away shortly after the inspection. The tenants testified the agent passed away approximately one year later.

Tenants' Claim - Analysis

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$1150 on March 1, 2012. I determined the tenancy ended on January 31, 2015. I further determined the tenants provided the landlord with their

forwarding address in writing on February 1, 2015 by e-mail. I do not accept the submission of the landlord that she was not given proper notice of the tenants' forwarding address. Section 38 of the Act provides that the landlord has 15 days from receipt of the tenants' forwarding address to file a claim. The landlord acknowledged receipt of the e-mail containing the forwarding address.

Further, the landlord failed to provide the tenants with a Condition Inspection Report at the start of the tenancy. As a result the landlord's right to claim against the security deposit has been extinguished.

Consequences for tenant and landlord if report requirements not met

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. However, the tenant agreed with the landlord that \$35 could be deducted from the deposit for cleaning the oven. As a result I determined the tenants have established a claim against the landlord for double the security deposit held by the landlord minus the \$35 he agreed could be deducted for a total of \$2230 ($\$1115 \times 2 = \2230). The tenants are also entitled to recover the \$50 filing fee for a total of \$2280.

Landlord's Claim:

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property

by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

The Application for Dispute Resolution filed by the landlord did not include a monetary order worksheet. It is difficult to determine exactly what claims are being made. Further, the landlord testified the tenants caused significant damage. The tenants disputed this testifying that many of the landlord's claims were present prior to the tenant taking possession and were listed on the Condition Inspection Report at the start of the tenancy.

With respect to each of the landlord's claims I find as follows:

- a. The landlord testified the tenants caused significant damage to the hardwood floors. She produced photographs that showed the damage. She also produced a quotation that indicates it would cost \$2936 to refinish and \$6420 to replace. The landlord's real estate agent did not testify at the hearing. However, the landlord produced an e-mail from him stating that the hardwood floors were in bad shape. The letter does not indicate the condition of the hardwood floors at the start of the tenancy.

The floors were 6 years old. The tenants testified that the floors were significantly damaged prior to taking possession and the damage was listed on the Condition Inspection Report. The tenant acknowledged that his 3 children may have contributed to the damage but this amounted to reasonable wear and tear. I determined the landlord failed to prove the tenants caused most of the damage. However, I determined the tenants contributed to the damage and the landlord is entitled to \$500 of this claim.

- b. I dismissed the landlord claim for the cost of replacing the light fixture as the landlord failed to prove it was damaged by the tenants. The tenants testified that it was damaged before they took possession.

- c. The landlord claimed the sum of \$1200 for painting plus \$218 for supplies. The landlord testified the rental unit was painted shortly before the tenants took possession. The tenants disputed this testimony. I am satisfied the tenants caused some damage to the walls. However, Policy Guideline 40 provides the life expectancy of an interior paint job is 4 years. I determined the landlord is entitled to \$500 of this claim.
- d. I dismissed the landlord's claim of \$200 for the cost of paying her real estate agent. The tenant breached the tenancy agreement two month early. However, the landlord would have incurred this expense had the tenants vacated the rental unit 2 months later.
- e. The landlord claimed for a scrape on the ceiling. The tenants acknowledged causing this damage. However, the damage has not been repaired and there is no quotation as to the expected repair cost. I determined the landlord is entitled to nominal damages of \$50 for this claim.
- f. I determined the landlord is entitled to \$174.02 for the cost of replacing a fridge crisper.
- g. I dismissed the landlord's claim for the cost of excessive sooting in the fire place as the landlord failed to prove the tenants caused the damage. The claim for damage to the exterior wall of the rental unit is dismissed for the same reason.
- h. I dismissed the landlord's claim of \$35 for cleaning the oven as that was deducted as when the tenants' claim was considered.
- i. I dismissed the landlord's claim of \$100 for the cost of repairing a bathtub stain as the landlord failed to prove the tenant caused the damage.
- j. I dismissed the landlord's claim for stains on the dining table as the landlord failed to prove the tenants caused this damage.
- k. I dismissed the clam for the cost of replacing a mailbox key as this claim has not been proven.
- l. I dismissed the claim for the repair to a hand shower in the master bath as the landlord failed to prove this damage was caused by the tenants.
- m. The landlord claimed reimbursement of a \$300 per month reduction of rent pursuant to an agreement with the tenant to renovate part of the rental unit. The landlord alleged the tenant failed to properly complete the work and failed to

provide receipts. The landlord stated that she wanted to withdraw this claim at this time. I ordered this claim be dismissed with liberty to re-apply.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$1224.02 plus the \$50 filing fee for a total of \$1274.02.

Conclusion:

The tenants have established a claim against the landlord in the sum of \$2280. The landlord has established a claim against the tenants in the sum of \$1274.02. **After setting off one claim against that of the other I ordered the landlord to pay to the tenants the sum of \$1005.98.**

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: June 04, 2015

Residential Tenancy Branch

