



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for money owed or compensation for loss under the Act;
2. For a monetary order for damages to the unit;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for money owed or compensation under the Act?

Is the landlord entitled to a monetary order for damages to the unit?

Are the tenants entitled to double the security deposit?

Background and Evidence

The parties agreed the tenancy began June 1, 2013. Rent in the amount of \$1,450.00 was payable on the first of each month. A security deposit of \$725.00 was paid by the tenants. The tenancy ended on September 30, 2015.

Tenants' application

The tenants claim as follows:

a.	Double security deposit (\$725.00)	\$ 1,450.00
b.	Filing fee	\$ 50.00
	Total claimed	\$ 1,500.00

The tenants testified that the landlord did not complete a move-out condition inspection report at the end of the tenancy and therefore were not entitled to make a claim against the security deposit.

The landlord's agent testified that a move-out condition inspection was not completed as the tenants were not out of the rental unit until 8:00 p.m. and the new renter was waiting.

The landlord agent testified that they filed their application within the time limit permitted under the Act, and their claim was not only for damage to the rental unit, but for monetary compensation for the tenants overholding the rental unit.

Landlord's application

The landlord claims as follows:

a.	Late move-out fee for overholding	\$ 150.00
b.	Cleaning costs	\$ 300.00
c.	Filing fee	\$ 50.00
	Total claimed	\$ 500.00

Late move-out fee for overholding

The landlord's agent testified that the tenants failed to vacate the rental premise at 1:00 p.m. on September 30, 2015. The landlord stated that because the tenants were overholding the premise they had to attend several times to see if they were ready to complete the move-out inspection, which was not done due to the lateness. The agent stated that the new renter was also inconvenience as they were not able to move into the rental unit until after 8:00 p.m. The agent stated that they seek to receive compensation in the amount of \$150.00.

The tenants testified that because they were moving to another rental unit within the building the landlord agreed that they had until midnight on September 30, 2015, to vacate the rental unit. The tenants stated that they were told the new renter was not moving into the rental unit until October 1, 2015.

The landlord's agent denied that the tenants were given permission to remain in the rental unit until midnight on September 30, 2015. The agent stated that they called the tenants in the early morning on September 30, 2015, and told them that the unit they were moving into was empty and that they should start moving their belongings.

Cleaning costs

The landlord's agent testified that they did not complete the move-out condition inspection report with the tenants because it was late and the new renter was waiting to take possession of the rental unit. The agent stated that the new renter was not satisfied with the cleaning that the tenants had done and the new renter spent 10 hours cleaning. The landlord stated that they do not have any photographs of the state of the rental unit at the end of the tenancy.

The tenants testified that they left the rental unit reasonably cleaned. The tenants stated that the only thing that may have required additional cleaning was the inside of the oven.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, both parties have the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation

Tenants' application

Although I find the landlord breached the Act, when they failed to complete the move-out condition inspection report in accordance with section 35 of the Act, which extinguished their right to claim against the security deposit for damage to the rental unit; however, the landlord's application for dispute resolution was claiming against the security deposit for money owed or compensation under the Act for the tenants overholding the rental unit, which is not related to the issue of damage to the rental premise.

I find the landlord was entitled to claim against the security deposit for any issue other than damage to the rental unit. The landlord's application was filed in accordance with section 38 of the Act. I find the tenants have failed to prove a violation of the Act. Therefore, I find the doubling provisions of section 38(6) of the Act, does not apply in this case.

As the tenants were not successful with their application for double the security deposit, I find the tenants are not entitled to recover the filing fee from the landlord.

Landlord's application

Late move-out fee for overholding

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends

In this case, both parties have provided a different version as to the agreed upon time to vacate the rental unit. However, I do not accept the tenants' version that they were given until 12 midnight to vacate the rental unit, as it would be unreasonable for furniture to be moving in hallways and expecting the landlord to be present at midnight. Therefore, I find the tenants breached section 37 of the Act, when they did not vacate the rental unit by 1 p.m.

However, I am not satisfied that the landlord or the new renter is entitled to compensation, as there was no actual loss suffered. The new renter was moving into

the rental unit on September 30, 2015, and was inconvenienced by the tenants' late departure; however, the new renter's tenancy agreement did not take effect until October 1, 2015.

Further, although I accept the tenants' actions was a breach of the Act when they failed to vacate the premise by 1:00 p.m., and this was an inconvenience to the landlord, I find being inconvenienced is often part of doing business as a landlord and there was no actual loss suffered. Therefore, I find dismiss this portion of the landlord's claim.

Cleaning costs

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, the new renter did not think the rental unit was left reasonably clean by the tenants; however, the new renter may have their own standard of cleanliness. The new renter does not have any right to determine whether there has been a breach of section 37 of the Act by another tenant. Rather that is the landlord's responsibility to make that determination at the end of the tenancy.

In this case, the landlord did not conduct a move-out condition inspection with the tenants. Although I have found the tenants breached the Act, when they vacated the rental premise late, it was still the responsibility of the landlord to complete the move-out condition inspection with the tenants prior to allowing the new renter to take possession of the rental unit.

Further, both parties have provided a different version as to the state of cleanliness. As the burden of proof is the landlord's, I find without further evidence such as photographs that the landlord has failed to provide sufficient evidence to support that the tenants did not leave the rental unit reasonably clean. Therefore, I dismiss the portion of the landlord's claim.

As the landlord was not successful with their application, I find the landlord is not entitled to recover the filing fee from the tenants.

Since the landlord was not successful with their application, I find the landlord is not entitled to retain any portion of the tenants' security deposit. Therefore, I grant the tenants a formal monetary order pursuant to section 67 of the Act, for the return of the original amount of the security deposit in the amount of **\$725.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

Both respective applications are dismissed. As the landlord was not successfully with their application to retain the tenants' security deposit, the tenants were granted a monetary order in the above noted amount for the return of their security deposit.

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 2, 2015

Residential Tenancy Branch

