



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

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

The landlords' application is seeking orders as follows:

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

The tenants' application is seeking orders as follows:

1. Return of the double 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 oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to a monetary order?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to double the security deposit?

Background and Evidence

The parties agreed that the tenancy began on August 1, 2014. Rent in the amount of \$1,175.00 was payable on the first of each month. The tenants paid a security deposit of \$587.50. The tenancy ended on October 31, 2014.

The parties agreed that the landlord has returned to the tenants the amount of \$399.50 of the security deposit. The landlord has retained the amount of \$188.00.

The parties agreed a move-in and move-out condition inspection report was completed.

Landlords' application

The landlords claim as follows:

a.	Repair hole in wall	\$ 140.00
b.	Replace visitor parking decal	\$ 25.00
c.	Replace Strata rules	\$ 23.00
d.	Filing fee	\$ 50.00
	Total claimed	\$ 238.00

Repair hole in wall

The landlords testified that the tenants caused damage the wall when they made a hole from the living room wall into the bedroom wall. The landlord stated that the tenants agreed that they caused the damage in "Attachment A" filed in evidence. The landlord seeks to recover the cost of the repair in the amount of \$140.00. Filed in evidence is a receipt.

The tenant testified that they believe that the hole that was made is normal wear and tear, as they had telus add a second cable box in the bedroom.

The landlords argued that the tenants did not have permission to make alteration to the rental unit.

Replace visitor parking decal

The landlords testified that the tenants failed to return the visitor parking pass. The landlords stated that the tenants agreed that are responsible for the cost and deduction would be made from the security deposit in "Attachment A" filed in evidence. The landlords stated that they were charged by the strata the amount of \$25.00 to replace the visitor parking pass.

The tenant testified that they do not dispute that they are responsible for the lost parking pass. The tenant stated that they believe the amount of \$25.00 for a laminate pass is excessive.

Replace strata bylaws

The landlord testified that the tenants failed to return the strata bylaws rules at the end of the tenancy. The landlord stated that the tenants agreed that the cost to replace the bylaws would be deducted from the security deposit in "Attachment A" filed in evidence.

The tenant testified that they had a copy of the bylaws rules, however, could not find them at the end of the tenancy.

Tenants' application

The tenants claim as follows:

a.	Double the security deposit (\$1,175.00 - \$399.50)	\$ 775.00
b.	Filing fee	\$ 50.00
	Total claimed	\$ 825.00

The tenant testified that the landlords only returned the amount of \$399.50, of their security deposit. The tenant stated that there was no agreement to the actual cost the landlord was entitled to deduct from the security deposit. The tenant stated that because of that the landlord must return the full amount of the security deposit to the tenants and then make an application for damages.

The landlord testified that their application to keep part of the security deposit was filed within 15 days of the tenancy ending.

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.

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.

Landlords' application

Repair hole in wall

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, any changes to the rental unit not explicitly consented to by the landlord must be returned to the original condition.

In this case the tenants agreed that they made changes to the rental unit by having telus add a second cable box to the bedroom. However, the tenants did not have permission from the landlords to make any changes to the rental unit.

Although the tenants believe this is normal wear and tear, I find the tenants' position unreasonable. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. It does not mean the tenants have the right to alter the rental premise. Therefore, I find the tenants breached the Act, when they failed to restore the rental unit to the condition it was at the start of the tenancy and this caused losses to the landlords. Therefore, I find the landlords are is entitled to recover the cost of making the repair in the amount of **\$140.00**.

Replace visitor parking decal

In this case the tenant agreed they lost the visitor parking pass; however, they feel the amount charge of \$25.00 to replace the pass is excessive. I find the tenants' position unreasonable and the cost charged not excessive.

Although the parking pass appears to be a simple laminate piece of paper, there are other costs associated, such as labour. Further, I find it reasonable that the strata would apply a fixed fee for losing such a pass as a deterrent. I find the tenants breached

the Act, when they failed to return the visitor parking pass at the end of the tenancy and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the cost of the parking pass in the amount of **\$25.00**.

Replace strata bylaws rules

The tenants agreed in "Attachment A" that they are responsible for the cost of the bylaw rules. The landlords have provided a receipt in the amount of \$29.66. Therefore, I find the landlords are entitled to recover the amount claimed in their application in the amount of **\$23.00**.

I find that the landlords have established a total monetary claim of **\$238.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$188.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$50.00**.

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

Tenants' application

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do **one** of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[My emphasis added]

The evidence of the tenant was that there was no agreement to the actual cost of the deductions from the security deposit and due to that the landlord must return the full amount of the security deposit to the tenants and then make their application claiming against it. I find the tenants' position unreasonable and not supported by section 38 of the Act.

In this case, the landlords' application was filed on November 13, 2015, within 15 days of the tenancy ending claiming against the security deposit. Although the landlord returned a portion of the security deposit, there was no requirement for the landlord to do so until their claim against the security deposit was heard and a decision rendered.

I find the tenants have failed to prove a violation of the Act, by the landlords. Therefore, I dismiss the tenants' claim for double the security deposit. Since the tenants were not successful with their application the tenants are not entitled to recover the filing fee from the landlords.

Conclusion

The landlords are granted a monetary order and may keep the security deposit of \$188.00 in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

The tenants' application is dismissed.

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 11, 2015

Residential Tenancy Branch

