



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNSD

For the landlord – MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order to recover the security deposit. The landlord applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant, the landlord and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the security deposit?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on March 01, 2013 for a fixed term of one year. The tenancy reverted to a month to month tenancy thereafter. Rent for this unit was \$1,350.00 per month due on the first of each month. The tenant paid a security deposit of \$675.00 a week prior to moving in. the tenant paid a pet deposit of \$675.00 in November, 2013. The landlord's agent agreed the landlord did receive the tenant's forwarding address by email on November 08, 2014.

The tenant's application

The tenant testified that they gave proper notice and vacated the rental unit on October 31, 2014. Neither the landlord nor the landlord's representative did a move in condition inspection report at the start of the tenancy and two opportunities were not given to the tenant or her co tenant to attend a move out condition inspection at the end of the tenancy. The tenant testified that she provided the landlord with her forwarding address on November 08, 2014 by email.

The tenant testified that at the end of the tenancy the landlord did a walk through with the tenant's partner who was a co tenant of the unit. The landlord returned \$400.00 of the security deposit to the tenant's partner. The tenant testified that her partner also agreed the landlord could retain \$130.00 for additional cleaning of the unit.

The tenant testified that her partner did not give the landlord permission to keep the balance of the security deposit of \$145.00 or permission to keep the pet deposit of \$675.00. The tenant testified that sometime later the landlord emailed the tenant and said they were keeping the pet deposit for the cost of painting the unit as the new tenant has an allergy to pets. The tenant testified that they cannot be held responsible for the new tenant's allergic reaction as this is a pet friendly building and the landlord allowed the tenant to keep a cat.

The tenant testified that the landlord later contradicted her statement and said that they kept the deposits because the walls needed painting and sanitizing. If the landlord was enhancing the unit the landlord cannot do so and charge the tenants for it unless the tenants had caused damage to the walls or ceiling.

The tenant testified that as the landlord has not returned the balance of the security deposit or the pet deposit the tenant seeks to recover double the security and pet deposit.

The landlord's agent testified that \$400.00 of the security deposit was returned to the male tenant when they vacated. The landlord's agent had estimated that the cleaning would be \$130.00 and the male tenant agreed the landlord could keep this amount. The landlord's agent testified that she had spoken to the tenant about the additional \$140.00 being applied for the cost of unblocking the toilet during the tenancy. This bill was actually higher at \$193.00.

The landlord's agent testified that when the male tenant left the unit he agreed that the security deposit was now all returned. The landlord's agent testified that she based this impression upon

previous experiences with the tenants. The pet deposit was not returned due to the cat hair and dirt which had to be cleaned up in the unit.

The landlord's application

The landlord was dialling into the hearing from overseas and had difficulty connecting to the hearing. Due to this the landlord's agent gave testimony on behalf of the landlord. The landlord's agent testified that the total cost incurred by the landlord for damage to the unit was \$1,853.00. \$400.00 was returned from the security deposit and a further \$275.00 was deducted from the security deposit.

The landlord's agent testified that \$240.00 was paid to the cleaner engaged to clean the unit for eight hours and the landlord's agent assisted the cleaner for the eight hours and therefore seeks to recover her labour cost of \$240.00. The landlord's agent referred to the cleaning report detailing areas cleaned in the unit.

The landlord seeks to recover a further \$900.00 to sanitize and paint the walls and ceilings. When the new tenant moved in she had allergies concerning the tenant's cat and that is why the walls and ceilings were sanitized and painted. The unit was last repainted three years ago.

The landlord's agent testified that the tenants caused a blockage in the toilet. The plumber said the tenants had put cat litter down the toilet which caused a clog in the toilet on November 23, 2013. The tenants did not want to pay the entire bill of \$198.00 and would only pay half the bill. The landlord's agent asked the tenants to contact the landlord about this but the landlord's agent does not believe the tenants did so.

The landlord's agent testified that this unit was fully furnished. Each tenant gets a mattress cover and pillow covers. These then get washed at the end of each tenancy. In this instance the pillow covers and mattress cover were left so dirty that they could not be washed and had to be thrown away. The landlord seeks to recover the costs for replacement pillow covers of \$40.00 and \$50.00 for the replacement mattress cover.

The landlord's agent testified that there were two dressers in the unit; after a few months the tenants called and said the drawer was not sliding in the dresser. The landlord's agent went to look at the dresser and it looked like a previous tenant had placed a heavy object on top of the dresser which caused the dresser to warp. The landlord's agent purchased a second hand dresser and a few months later the same thing happened again. The landlord's agent testified that as the tenants never opened the windows in the unit it created damp in the unit which caused the damage to the dresser. None of the other units suffer from damp and since the new tenant moved in they have not had the same issues. The landlord referred to a letter provided in evidence from the new tenant. The landlord seeks to recover \$80.00 for the two dressers damaged in the unit.

The landlord's agent testified that the tenants overstayed in the unit. Their lease expired at 1.00 p.m. on October 31, 2014. When the landlord's agent arrived the male tenant was still packing. The new tenant was supposed to be moving in the next day; however, they could not do so as the landlord's agent had to clean the unit. The landlord seeks to recover an amount of \$90.00 from the tenants for overholding.

The landlord seeks an Order to keep the security deposit and the pet deposit.

The tenant disputed the landlord's claim. The tenant testified that they did agree the landlord could keep \$130.00 for cleaning the unit as it was not left in a clean condition at the end of the tenancy; however, the tenant does not agree to the additional cleaning costs as the landlord and a cleaner would not have taken 16 hours between them to clean the unit and as part of that cost the cleaner also cleaned some items the tenants left behind for new tenants.

The tenant disputed the landlord's claim that the tenants are responsible to pay for the painting costs. The tenant testified if the incoming tenant has allergies this is not the fault of the tenants.

The tenant testified that the toilet became blocked. The tenant asked the landlord's plumber if this blockage was caused by the tenant putting cat feces with a small amount of cat litter down the toilet. The landlord's plumber informed the tenant that no it looked like something else caused the blockage. The tenant testified that when the plumber snaked the toilet to clean it, only human feces came out and nothing related to the cat box. The tenant testified that they only used the toilet in a normal way and never flushed sanitary products down the toilet.

The tenant disputed the landlord's claim concerning the pillow and mattress covers. The tenant testified that there was an old worn unclean mattress cover on the bed when they moved in and it was the tenants who actually washed this. The tenant testified that they had six pillows of their own which they used and while the tenant accepts that they were not clean as the tenant had taken her pillows on a camping trip the landlord had agreed the tenants could leave them at the unit. The landlord did not provide the tenants with pillow covers or pillows. The tenant testified that they choice not to wash the mattress cover at the end of the tenancy as it was not clean when they moved in.

The tenant testified that they did experience some problems with the dresser. The tenant recalls saying something to the landlord's husband as the dresser was bowed at the top. The one the landlord replaced it with was of a poor quality and it was the damp that caused the problem in their unit. The tenant provided photographic evidence showing mould on some of their own belongings. The tenant testified that the poor ventilation was not their fault as they would open the windows when they come home from work at night but could not leave them open while they were not at home as this was a basement unit and security of the unit would be compromised. The tenant testified that their cat that was put in the bedroom when they left the windows or door open.

The tenant testified that they had fully moved out on October, 2014. The landlord has no right to try and charge the tenants for the extra two days rent.

The landlord's agent asked the tenant if the landlord's agent responded in a timely manner when the tenants had any complaints. The tenant testified that the landlord's agent took from November to February to provide a new dresser after the tenant complained about the drawer.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's claim to recover double the security and pet deposit; s. 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Further to this s. 23(4) and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the tenant moved in and out of the unit, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(c) and s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security and pet deposit in full to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlord's agent agreed the landlord did receive the tenant's forwarding address by email on November 08, 2014. While email is not necessary a recognized way of providing a forwarding address in writing as the landlord's agent agreed the landlord received it on this date I will accept the landlord received the tenant's forwarding address in writing for the purpose of the *Act*.

I further find the male tenant had agreed the landlord could keep \$130.00 from the security deposit to cover any costs for cleaning and that the landlord did return \$400.00 on October 31, 2014. As a result, the landlord had until November 23, 2014 to return the balance of the security deposit of \$145.00 plus the pet deposit of \$675.00. As the landlord failed to do so, the tenant has established a claim for the return of double the security deposit after the \$130.00 has been deducted to an amount of \$1,090.00. I have then deducted the amount of \$400.00 already paid to the tenant. The tenant is therefore entitled to recover \$690.00 for the security deposit and the doubled pet deposit of \$1,350.00, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security or pet deposit for the term of the tenancy.

With regard to the landlord's claim for damage and cleaning; I find the tenants agreed they did not clean the rental unit at the end of the tenancy. S. 32 (2) of the *Act* states:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

This requires the tenant to ensure the unit is left reasonably clean at the end of the tenancy. I therefore find as the tenant does not dispute that they cleaned the unit that the landlord is entitled to recover cleaning costs. The tenant agreed the landlord could keep \$130.00 from the security deposit to pay for cleaning; however, as the landlord's costs are higher I find the landlord is entitled to a further amount. The landlord's agent testified that the cleaner worked for 8 hours and the landlord's agent worked for eight hours. The landlord has provided evidence showing the level of cleaning required and an invoice from the landlord's agent for \$240.00 and a receipt showing the cleaner was paid \$240.00. I am therefore satisfied that the landlord incurred costs of \$480.00 to clean the unit. As the tenants have paid \$130.00 towards this cost I find the landlord is entitled to recover the balance of **\$350.00**.

With regard to the landlord's claim to recover \$900.00 to sanitize and paint the walls; I am not satisfied from the evidence presented that the tenants are responsible for this cost. If this is a pet friendly building and the landlord allowed the tenant to have a cat in the unit, and then the incoming tenant had an allergy to cats then the landlords are not entitled to charge the outgoing tenants any costs to sanitize or paint the unit as a landlord is only entitled to recover costs from a tenants actions or neglect towards the rental unit. This section of the landlord's claim is therefore dismissed.

With regard to the landlord's claim for \$193.20 to cover the cost to unplug the toilet; the landlord has the burden of proof in this matter to show that the toilet was blocked by foreign objects deposited by the tenants. The tenant testified that she did put some cat feces which contained

small amounts of cat litter down the toilet and testified that the plumber told the tenant that this was not the cause of the blockage. Without corroborating evidence from the landlord to show that the tenants blocked the toilet through their actions or neglect for example by providing a letter from the plumber detailing what caused the blockage, then the landlord has failed to meet the burden of proof in this matter and the landlord's claim is therefore dismissed.

With regard to the landlord's claim for new pillow slips; the landlord must meet the burden of proof to show that the pillow slips were so dirty they could not be cleaned and the actual cost to replace them. The landlord has insufficient evidence to meet the burden of proof and therefore the landlord's claim for \$40.00 to replace pillow slips is dismissed.

With regard to the landlord's claim to replace the mattress cover; the tenant agreed that they did not wash the mattress cover at the end of the tenancy because it was not provided to them clean. If the landlord required the tenants to wash the mattress cover at the end of the tenancy the landlord should have ensured it was clean at the start of the tenancy. Without sufficient evidence to the contrary and without evidence showing the actual cost to replace the mattress cover the landlord's claim for \$50.00 is dismissed.

With regard to the landlord's claim for two dressers; the landlord has the burden of proof to show that the dressers were damaged through the tenants' actions or neglect. The landlord's agent testified that the tenants did not ventilate the unit which created damp conditions causing damage to the dressers. The tenant disputed this and stated they did open their windows when they were home. The landlord provided a letter from the incoming tenants who have stated they moved into the unit on November 01, 2014 and have not experienced any damp or moisture in the unit; however, the landlord did not call the new tenants to attend the hearing as witnesses or to submit to cross examination. The witness letter has not been sworn before a Notary. I can therefore place little weight on this evidence. Without further corroborating evidence to support the claim I find the landlord has not met the burden of proof in this matter and their claim for \$80.00 is dismissed.

With regard to the landlord's claim for two days rent; tenants are required to vacate a rental unit by 1.00 p.m. on the day their notice takes effect. In this case the male tenant was still in the process of moving from the rental unit. The landlord testified that this prevented the landlord's agent cleaning the unit until the next day in order to get it ready for the incoming tenants. The incoming tenants have stated in their letter provided in evidence that they were unable to move in until 5.00 p.m. or 6.00 p.m. on November 01, 2014 as the cleaner was there. The landlord has not provided evidence as to whether or not the incoming tenants paid rent for November 01, 2014. The tenants rent would have covered October 31, 2014. A landlord is not entitled to recover rent twice for the unit for any time period. Without corroborating evidence concerning when the new tenants started to pay rent I find the landlord's claim for two days rent for overholding must fail. I therefore dismiss the landlord's application for \$90.00.

As the landlord's application has some merit I find the landlord is entitled to recover their filing fee of \$50.00. The landlord has extinguished their right to file a claim to keep the security deposit; however, sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties.

Consequently, I order the landlord to keep \$400.00 from the tenant's security deposit to compensate the landlord for the cleaning and for the filing fee.

A Monetary Order has been issued to the tenant for the following amount:

Security deposit doubled less amounts paid and agreed upon	\$690.00
Pet deposit doubled	\$1,350.00
Subtotal for the tenant	\$2,040.00
Cleaning costs awarded to the landlord	(-\$400.00)
Total amount due to the tenant	\$1,640.00

Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,640.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

For the reasons set out above I grant the landlord the amount of \$400.00. This amount has been offset against the tenant's monetary award.

The reminder of the landlord's claim is dismissed without leave to reapply.

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: July 09, 2015

Residential Tenancy Branch

