



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- authorization to retain a portion of the tenants' security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for their application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlords confirmed that they received a copy of the tenants' dispute resolution hearing package sent by registered mail on December 17, 2014. The tenants also confirmed that they received a copy of the landlords' dispute resolution hearing package sent by registered mail well in advance of this hearing. Both parties also confirmed receipt of one another's written and, in the case of the tenants, a copy of the landlords' digital evidence package. I am satisfied that all of the above documents were duly served by the parties to one another in accordance with the *Act*.

Issues(s) to be Decided

Which of the parties are entitled to the tenants' security deposit? Are either of the parties entitled to recover their filing fees from the other party?

Background and Evidence

This tenancy began on or about September 1, 2013, on the basis of a one-year fixed term Residential Tenancy Agreement (the *Agreement*) prepared by the landlords and

signed by both tenants on August 25, 2013. At the conclusion of the initial fixed term, the tenancy continued as a periodic tenancy until the tenancy ended on November 30, 2014. Monthly rent for this furnished rental unit was set at \$1,600.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$800.00 security deposit paid on September 1, 2013.

Both parties entered into written evidence copies of the reports of the joint move-in condition inspection of September 3, 2013, and the joint move-out inspection of November 30, 2014. In the joint move-out condition inspection report signed by both parties, the parties noted that there was no damage to the rental unit for which the tenants were responsible.

The landlords' original application for a monetary award of \$308.75 received by the Residential Tenancy Branch on December 15, 2014, included the following items listed on the Monetary Order Worksheet they submitted with their application for dispute resolution:

Item	Amount
Cleaning (4 hours @ \$20.00 per hour = \$80.00)	\$80.00
Washing Machine Repair	78.75
Replacement of Bedding Linens and Pillows	100.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award Requested	\$308.75

Their amended application for dispute resolution added \$17.92, the cost of the USB they purchased for placing their photos into digital evidence. This increased their requested monetary award to \$326.67.

The tenants applied for the return of their \$800.00 security deposit plus the recovery of their \$50.00 filing fee.

Although the landlords confirmed that they did not notice any damage to the rental unit at the joint move-out condition inspection, nor note any such damage in the joint move-out condition inspection report, they sent the tenants written notice by mid-December 2014 of their intention to claim for damage against the tenants' security deposit. In this notice, the landlords maintained that the walls were not cleaned and that the areas behind the appliances were not cleaned. At the hearing, the female landlord testified that she spent well in excess of four hours cleaning the rental unit after

the tenancy ended. The landlords also submitted a receipt for \$78.75 for repairs to the washing machine pump, which they maintained was clogged. At the hearing, the landlords testified that the appliance repair person removed a sock from the pump, which had clogged the washing machine and made that machine unusable for the latter stages of this tenancy. The landlords' note also alleged that the tenants had taken a bookshelf belonging to the landlords. At the hearing, the parties agreed that the tenants returned this bookshelf to the landlords after the landlords sent their December 2014 note to the tenants. The landlords also claimed that the tenants had removed the bedding from two bedrooms, which cost the landlords \$283.33 originally. The landlords entered into written evidence a copy of the original bill for this bedding and asked that they be compensated in the amount of \$100.00 for the loss of this bedding, which the tenants apparently took when this tenancy ended. The tenants maintained that they understood that the landlords were not interested in keeping this bedding. The landlords provided digital evidence showing the condition of the rental unit through many photographs taken shortly after this tenancy ended.

The tenants testified that no concerns were raised by the landlords about the condition of the rental unit at the joint move-out inspection. When one of the landlords signed the move-out report noting that there was no damage, they expected to receive the return of their full security deposit. The female tenant said that the landlords were not clear as to their expectations with respect to the cleaning of the rental unit. The female tenant testified that she cleaned the rental unit for six hours before the tenants yielded vacant possession of the rental unit to the landlords. She said that she did not realize that the tenants were expected to pull the appliances out and clean behind them. She also admitted that the small bathroom was not properly cleaned nor was the porch where some of the tenants' belongings were placed shortly before their move. The tenants maintained that they were told that a previous attempt by the landlord to obtain a repair of the washing machine revealed that there was a missing part, which the landlords did not replace. The female tenant testified that she watched the repair person on that occasion and he did not alert her to any problem with a sock or a screwdriver head in the pump, the claim made by the landlords in their application for dispute resolution and during this hearing.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 37(2) of the *Act* requires a tenant to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.” The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful, as are photographs taken at the time of these inspections.

In this case, the parties did conduct joint move-in and joint move-out condition inspections, and the landlords created detailed item-by-item reports of these inspections. Both parties signed these reports, which included the statement that there was no damage for which the tenants were responsible. The detailed breakdown revealed little if any change in the condition of the rental unit between the two inspections.

Although I recognize that the landlords may not have noticed some of the damage to the rental unit until they began preparing the rental unit for re-renting, their discovery of damaged items after they signed that there was no damage to the rental unit presents problems for their claim against the tenants’ security deposit. However, some of these items, such as the sock in the washing machine pump could not likely have been discovered during the course of a standard move-out condition inspection. I also have taken into consideration the photographic evidence provided in the landlord’s digital evidence, which does reveal some lack of cleaning in some areas of the rental unit. The female tenant also confirmed that her cleaning did not extend to one of the bathrooms, the porch and the areas behind the appliances.

Based on a balance of probabilities, I find that there is sufficient evidence that the tenants did not complete a full and thorough cleaning of all areas of the rental unit before their tenancy ended. As such, I allow the landlords a monetary award of \$40.00 for cleaning, one-half of the amount claimed by the landlords. I do not allow their entire

claim, as I find that the landlords did sign the report at the end of the tenancy indicating that no damage occurred during this tenancy.

The tenants also did not deny the landlords' claim that the tenants removed bedding linen and pillows supplied by the landlords for this tenancy. As the landlords' loss extended beyond the amount they spent to purchase these items, I find that the landlords' claim for the recovery of \$100.00 for the loss of these items reasonable and fair. I issue a monetary award in the amount of \$100.00 for the landlords' recovery of losses related to the bedding, linen and pillows.

I have also considered the landlords' claim for the repair of their washing machine. I find conflicting evidence regarding this portion of the landlords' claim. There was clearly an issue with this washing machine during the latter stages of this tenancy. The tenants said that they did not have use of that machine, even after the landlords retained a repair person to inspect the washing machine while the tenancy was still in place. The landlords did not provide any evidence from the person who repaired the washing machine and the copy of their receipt for this item was for the most part illegible. Under these circumstances, I find that the landlords have not adequately demonstrated that the tenants were responsible for repairs to the washing machine. I dismiss this element of the landlords' application without leave to reapply.

I also dismiss the landlords' amended application to obtain the recovery of the cost of their purchase of a USB, as the only item associated with this hearing that the parties are allowed to recover are their filing fees.

I order the landlords to return the difference between the tenants' security deposit of \$800.00 and the \$140.00 the landlords are allowed to retain from that deposit. As both parties have been partially successful in their applications, I make no order regarding the parties' filing fees.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, in which the landlords are allowed to retain a total of \$140.00 from the tenants' security deposit, but return the remainder of that deposit to the tenants:

Item	Amount
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Cleaning (2 hours @ \$20.00 per hour = \$40.00)	\$40.00
Replacement of Bedding, Linens and Pillows	100.00
Less Security Deposit	-800.00
Total Monetary Order	(\$660.00)

The tenants are provided with these Orders in the above terms and the landlords must be served with this Order. Should the landlords fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

Both applications to recover filing fees are 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 29, 2015

Residential Tenancy Branch

