



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MND
 MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The parties have both applied for a monetary order claiming the security deposit, and to recover the filing fees for the costs of the applications.

The tenant and one of the named landlords attended the hearing as well as an agent for the other named landlord. Near the commencement of the hearing, the landlord left the call and was represented by the agent.

During the course of the hearing, it was determined that the landlords' claim to keep a portion of the security deposit was in relation to damage to the rental unit. The tenant did not oppose amending the landlords' application, and I therefore amend it to include a claim for a monetary order for damage to the unit, site or property.

The parties each gave affirmed testimony and were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Should the landlords be permitted to keep part of the security deposit in full satisfaction of the claim?

- Has the tenant established a monetary claim as against the landlords for return of the security deposit?

Background and Evidence

The landlords' agent testified that this fixed term tenancy began on January 21, 2014, was renewed on February 1, 2015 to expire on July 31, 2015. However, the parties mutually agreed to end the tenancy early on the understanding that the landlords would be able to show the rental unit and find another tenant to mitigate any loss of rental revenue. The tenant moved out of the rental unit on March 31, 2015. A copy of the latest tenancy agreement has been provided.

Rent in the amount of \$1,200.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$600.00, and no pet damage deposit was collected. The landlord returned some of the deposit to the tenant in April, 2015.

The landlords' agent further testified that a move-in condition inspection report was completed by the parties at the commencement of the tenancy and a move-out condition inspection report was completed by the parties at the end of the tenancy. A copy of the move-in and move-out inspection reports have been provided, which are both on one form. The tenant provided a forwarding address in writing on that form on March 31, 2015.

The landlords claim:

\$225.00 for painting a wall. Because the landlords allowed the tenant to end the tenancy early, the tenant had agreed about 2 weeks prior to fill picture holes and paint a wall in the rental unit. The tenant did so, however the owner provided the tenant with an incorrect color code for matching. He was to do a touch-up where holes were, but using the wrong codes left patches and blotches that remained visible. Once the tenant saw it was the wrong color he should have notified the landlords. A copy of cheque payable to the painter dated April 1, 2015 has been provided. A new tenant was moving in April 1, 2015 and the landlord was under a tight time constraint to get the job done.

\$210.00 to repair dent in fridge. The dent was noticed during the move-out condition inspection and initially the tenant agreed to accept responsibility. The rental unit was never occupied previously. The rental unit is a 1 bedroom condominium style apartment, and the tenant was the first tenant. The landlords' agent further testified that with any kind of stainless steel appliance, if not careful opening and closing, it will cause damage to the base of the appliance. A dent doesn't happen through normal wear and tear. The

landlords' agent testified that the tenant banged into it or hit something into it. A receipt for repair to the dent has provided. Also provided is a photograph and the landlord testified that the dent is smaller than a dime.

Also provided is an advertisement for a new door handle costing \$38.03 but no receipt is available yet because it's back-ordered and has not yet been received. The door handle didn't have a chip taken out of it at the beginning of the tenancy and it has a chip now. The landlord has provided photographs and agrees that the chip is about the size of a head of a pin times 3.

The landlords' claim totals \$473.03, plus recovery of \$50.00 filing fee, or \$523.03. The landlords returned some \$78.00 to the tenant in April, 2015.

The tenant testified that the damage to the fridge and handle was an accident that happened about 3 days after the tenancy began. A jar fell out of the fridge and caused a tiny chip in the handle and a small dent in the freezer door. One of the landlords was shown the damage during a regularly scheduled monthly inspection. The landlord told the tenant to see if he could get it fixed. The tenant asked a friend who repairs car bodies who said that the damage is too small and there's nothing to do. Then the landlord told the tenant that she didn't know anyone who could fix it, but without telling the tenant, had someone in to do it.

The tenant further testified that the same landlord told the tenant that she would ask the owners to pay 50% of the cost of painting the wall. Copies of text messages to that effect have been provided. The landlord booked painters before the tenant had an opportunity to re-do the painting. The landlords had given the tenant the wrong paint code number, and the tenant used that paint. The tenant has little experience with painting and testified that he thought the color would match once the paint had dried.

The tenant agrees that the landlords returned about \$78.00 of the security deposit to the tenant in April, 2015. The tenant seeks an order for the balance of the security deposit and recovery of the \$50.00 filing fee.

Analysis

Where a party makes a claim against another party for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;

3. The amount of such damage or loss, and
4. What efforts the claiming party made to mitigate, or reduce the damage or loss suffered.

Further, the *Residential Tenancy Act* states that at the end of a tenancy, the tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear.

In this case, the landlord claims the cost of painting, but agrees that the tenant was given the wrong paint code to use. I have reviewed the evidentiary material, including text messages and emails, and it is clear that on March 30, 2015 the landlord provided the codes. The tenancy ended the following day. The tenant testified that he thought the color would change once the paint dried, and I accept that testimony. I am not satisfied that the landlords have established element 4 in the test for damages, given that one day prior to the end of the tenancy the landlord provided the incorrect number to the tenant.

With respect to the damaged freezer door and door handle, I find that the damage is minor. A tenant is not responsible for damages due to normal wear and tear, but the *Act* also specifies that a tenant must repair any damage caused by a tenant during the tenancy. In this case, the landlords' agent disagrees that the damage is normal wear and tear, indicating that the damage could only be caused by banging into it. The tenant testified that a jar fell out of the fridge, which I find is consistent with the landlord's assumption and is accidental in nature. Considering the photographs and the testimony of the parties, I find that the damage to the door and handle is normal wear and tear, and the landlord's application for monetary compensation for repairs or replacement is hereby dismissed.

With respect to the security deposit, the *Act* requires a landlord to make a claim against it or return it to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either the landlord must repay the tenant double. In this case, the tenant provided a forwarding address on March 31, 2015 and the landlord filed the application for dispute resolution claiming against it on April 13, 2015, clearly within the 15 days. Therefore I find that the tenant is not entitled to double the security deposit.

The parties agree that the amount of the deposit that was returned to the tenant was \$600.00, less the landlords' claim of \$473.03, and less the \$50.00 filing fee. That amounts to \$76.97 already returned to the tenant, and I order the landlord to return the balance of \$523.03.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$573.03.

This order is final and binding and may be enforced.

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: August 13, 2015

Residential Tenancy Branch

