



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord and both tenants attended the hearing, and the landlord's agent and one of the tenants gave affirmed testimony. The parties provided evidentiary material in advance of the hearing and were given the opportunity question each other respecting the evidence and testimony, 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.

The landlord's agent is hereafter referred to as the landlord.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 1, 2014 and ended on March 31, 2015. Rent in the amount of \$1,150.00 per month was payable on the 1st day of each month and there are no rental arrears. A copy of the tenancy agreement has been provided.

The landlord further testified that a move-in and a move-out condition inspection report were completed at the beginning and at the end of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$575.00 as well as a pet

damage deposit in the amount of \$575.00. The landlord returned the \$575.00 pet damage deposit to the tenants, but still holds the \$575.00 security deposit.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$17.69 to replace a bathroom shower curtain rod that was broken at end of tenancy;
- \$16.80 to replace a blind for the side entry that was broken at the end of the tenancy;
- \$346.50 for cleaning the rental unit at the end of the tenancy;
- \$68.25 to replace a living room blind; and
- \$125.00 to repair and paint the living room wall.

Receipts have all been provided, and the landlord's damage claim totals \$574.24. The landlord further testified that it's a total coincidence that the security deposit amount is almost exactly the same as the claim.

Although it's not mentioned on the move-in condition inspection report, the landlord had taken down the living room blind after prior tenants were there, to repair them and brought them to tenants to hang in the rental unit by sliding them into a bracket.

When the tenants moved out they didn't clean much. Not down behind stove, bathroom cupboard doors were dirty, no dusting done, no significant amount of cleaning was done by the tenants. The landlord also testified that the stove was pulled out when the move-in condition inspection report was completed. The new tenant moving in was 8 months pregnant and was crying, upset about the uncleanness of the rental unit. The landlord was working and didn't have time to do it, so called 5 cleaning companies and found one that had 3 people available to do it immediately and charged the landlord for only one person, so the landlord accepted. That tenant was moving in the same day the tenants were moving out; March 31, 2015. Also provided are photographs with a letter from the landlord to the Residential Tenancy Branch that states the photographs were taken on April 30, 2015, which is crossed out and the date of March 31, 2015 has been added in handwriting. The landlord testified that the letter contained an error in the date that was corrected.

The tenant testified that the parties had a full agreed settlement of \$125.00 payable to the landlord, but the landlord retained the entire security deposit.

Soon after moving in, the landlords requested that the tenants plug the holes from a shelf they had hung with the landlord's permission, which the tenants did. The landlord said she was going to deal with painting. There were also chips in the paint from a previous tenant, which the tenants also patched.

At move-out, the landlord said the tenants had to paint the putty marks and was yelling, screaming and swearing. The landlord did a walk-through every room, but was walking in an agitated manner, cutting off the tenants and wouldn't talk to them about anything. The landlord would not let the tenants look at the report while walking through the rental unit, saying "No," and swearing at the tenants. The tenant's mother was also there, and a letter from her has been provided. The tenants tried to calm down the landlord but she stormed out and didn't complete in the inspection. She

yelled at the tenants' children to "get the hell out" and didn't return. The tenants found her, and then she had a different disposition and apologized, but by then the parties didn't have time to finish the inspection, so they discussed it. The tenants reminded the landlord what she had told them to do, and then the tenants agreed to pay for painting. The landlord wanted to put a number on it and the tenants offered \$50.00. The landlord already had paint and brushes, so that was agreed. The landlord admitted she wrote things on the condition inspection report that were irresponsible at the time and said she did so while in the wrong frame of mind and said it was all wear and tear. The landlord wouldn't let the tenants see the report. The new tenant was waiting to get into the rental unit so the landlord suggested agreeing to a final amount, and the amount of \$125.00 was agreed to on the report. After the parties agreed to the amount, the landlord took the report and said she had to fill out other parts and that she'd send a copy in the mail.

The tenants received it on May 21, 2015, after the tenants had written 3 letters confirming they still didn't have it. When the tenants received the report they were dismayed. The landlord had added stuff so the tenants asked the landlord to send a copy of the original but never heard back from the landlord. A copy of the tenants' letter has been provided. The tenant also suggests that the report, a copy of which has been provided for this hearing shows 2 different writing styles, one being after the tenant had signed it.

The tenant also testified that the entry door blinds were "a piece of crap," and the landlord had said that the living room blinds were 16 years old.

The landlord's evidence that the stove was moved out for inspection at the beginning of the tenancy is untrue, and the tenants don't cook meat. The photographs of the landlord show a meat wrapper under the stove.

The landlord's testimony is that the photographs were taken April 30, 2015 and are not dated, but the inspection report was completed on March 31, 2015. The tenants' photographs were taken March 31, 2015 right after the landlord stormed out.

The landlord received the tenants' forwarding address in writing on March 31, 2015.

Analysis

In order to be successful in a claim 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 such damage or loss.

I have reviewed the move-out condition inspection report and I agree with the tenant that the form appears to have a different writing style on some areas. Particularly beside the checkbox where it states that the tenant agrees that the report fairly represents the condition of the rental unit at the end of the tenancy, added is, "clean and dirty not included in first walk through."

The *Act* requires a landlord to ensure that the condition inspection reports are completed in accordance with the regulations, and once it's signed, it cannot be altered. Also, if a landlord fails to provide a tenant with a copy within 15 days of the later of the date the report is completed or the date the landlord receives the tenant's forwarding address in writing, the landlord's right to make a claim against the deposits is extinguished. In this case, the tenancy ended on the same day as the move-out condition inspection report, March 31, 2015. I accept the undisputed testimony of the tenant that the landlord was requested 3 times to provide a copy and it was not received by the tenants until May 21, 2015, well beyond the time prescribed, and therefore I find that the landlord's right to make a claim against the security deposit for damages is extinguished. Therefore, having no other claim against the tenants, the landlord's obligation was to return the security deposit within 15 days or repay the tenants double.

However, the landlord's right to make a claim for damages is not extinguished. Having heard the testimony of the parties and reviewing the evidentiary material, I find that the tenants and the landlord agreed that the full amount that the landlord should retain from the deposits was \$125.00, and I am not satisfied that the landlord has established any further claim from the tenants.

I refer to Residential Tenancy Branch Policy Guideline #17 – Security Deposit and Set Off, which states, in part:

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

The tenant agreed that the landlord should keep \$125.00, and I hereby order the landlord to keep \$125.00 of the security deposit and return the balance of \$450.00 to the tenants forthwith. If the landlord does not return that amount to the tenants within 15 days of the date of this Decision, the tenants will be at liberty to apply for double the amount.

Conclusion

For the reasons set out above, I hereby order the landlord to keep \$125.00 of the security deposit and return the balance of \$450.00 to the tenants forthwith. If the landlord does not return that amount to the tenants within 15 days of the date of this Decision, the tenants will be at liberty to apply for double the amount.

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: September 30, 2015

Residential Tenancy Branch

