



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenants by mailing, by registered mail to where the tenants reside on April 9, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlords are entitled to a monetary order and if so how much?
- b. Whether the landlords are entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlords are entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a tenancy agreement that provided that the tenancy would start on June 1, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$1400 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$700 and a pet damage deposit of \$700 at the start of the tenancy. The landlords have returned the pet damage deposit. The tenancy ended on April 1, 2015.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. The landlords claim the sum of \$345 for the cost to replace 6 window screens. The tenant testified they did not damage nor take any window screens with them when they left. The landlords have the burden of proof. They have the obligation to prepare a condition inspection report and to give the tenant a copy of it at the start and end of the tenancy. Neither party produced a copy of the Condition Inspection Report. A real estate firm acted on behalf of the landlord. The tenant testified she did not produce the report because it was silent with respect to the matters claimed in this application.

Section 21 of the Residential Tenancy Act Regulations includes the following:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I determined the landlord failed to prove that the window screens were damaged by the tenants or taken by them. The tenants deny damaging or taking them. The landlord failed to provide sufficient proof the window screens at issue were

present at the start of the tenancy. It would not have been difficult for the landlord to include a notation in the Condition Inspection Report had they been there. The landlord failed to establish the tenants damaged or took the window screens.

- b. The landlord claimed the sum of \$475 to install a storm door. The storm door was removed and placed in a garage. It was subsequently moved to a car tent. The tenant denies taking it. She testified she advised the landlords they should remove belongings from the car tent. The male landlord attended and removed the belongings. The tenant submits that it is likely the landlord removed the storm door at this time. The male landlord did not attend the hearing and did not give evidence of any sort. I determined the landlord failed to prove the tenants took this storm door and as a result this claim is dismissed.
- c. The landlord claimed the sum of \$690 for the cost to replace a door and frame to the side garage.

The tenant denies causing the damage testifying it was present before they took possession. The landlord testified it was damaged by the tenant or someone permitted on the property by the tenant during their tenancy. The photographs show the damage. There is no evidence the door was damaged by the landlords after they regained possession. If the damage pre-existed the start of the tenancy one would have expected the tenant would have noted it in the Pre-tenancy Inspection report and the tenant would have presented the report in this hearing.

However, I determined the landlords' claim is excessive as it fails to consider depreciation. After considering depreciation I determined the landlords have established a claim against the tenant for \$300.

In summary I determined the landlords have established a monetary claim against the tenant(s) in the sum of \$300 plus the \$50 for the costs of the filing fee for a total of \$350.

Security Deposit

I determined the security deposit plus interest totals the sum of \$700. I determined the landlord is entitled to retain the sum of \$350 from the security deposit. I order that the landlords pay to the Tenants the balance of the security deposit in the sum of \$350.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 15, 2015

Residential Tenancy Branch

