



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MND, MNSD, FF
 Tenant: MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by one of the landlords and the tenant.

I note the tenant's Application for Dispute Resolution named two tenants as applicants and the landlords' Application named only a male tenant. Upon review of the tenancy agreement submitted by the landlords I note that only a male tenant has signed the tenancy agreement. As such, I find the female applicant named in the tenant's Application for Dispute Resolution is not a party to the tenancy. As a result, I amend the tenant's Application to exclude the named female applicant.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for compensation for cleaning and repairs; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlords submitted into evidence a copy of a tenancy agreement signed by the parties on November 15, 2012 for a month to month tenancy beginning on December 1, 2013 for a monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$425.00 paid. The agreement has an addendum with additional clauses including

that there would be no smoking in the home. The parties acknowledged that it was agreed the tenant could smoke in the “boot room”, which was not a part of the main home.

The parties agree the tenancy ended on May 31, 2015 and that the tenant provided the landlords with his forwarding address before the end of the tenancy. I note the landlords submitted their Application for Dispute Resolution on June 8, 2015.

The landlords seek the following compensation:

Description	Amount
Replacement blinds	\$109.74
Trim	\$94.65
Paint and supplies plus cleaning supplies	\$190.15
Stain for trim and supplies	\$31.04
Paint and Primer	\$115.54
Total	\$541.12

In support of their claim the landlords have submitted into evidence:

- A written statement from the landlords outlining issues that arose during and at the end of the tenancy;
- An email from the previous owner of the home. The email states: “These photos, taken roughly early October of year 2013 show the condition it was in when the property was sold to the new owners. Besides a few wall scuffs and usual wear and tear it was in great condition. In the 5+ years we lived there we never allowed anyone to smoke inside the house.” The email also indicates there were two attachments. Attachments were not submitted;
- Receipts and invoices; and
- Several photographs.

The landlord submits that as a result of the tenant smoking inside the rental unit it required substantial cleaning and the unpainted stippled ceiling required painting. The landlord submits also that as a result of the tenant’s pet damage was caused to the trim and moulding of the rental unit. The landlord also seeks compensation for a damaged blind that required replacement.

The tenant submits that they did not smoke in the unit other than in the boot room and it is likely that smoke got into the unit when they would open the door between the boot room and the rest of unit. The tenant also submits that when they first moved into the rental unit they found candles in a drawer and that is likely that previous occupants may have used candles in the unit.

The tenant also disputes the condition of the moulding and blinds. He submits that these items were in the damaged condition at the start of the rental unit.

In support of his position the tenant submitted into evidence several photographs of the condition of the rental unit at the start of the tenancy and a letter of reference for the tenant that the landlords provided on April 19, 2015. The letter states that the tenant had been an exception renter and that he had maintained “the rental home and property with care and have always paid there rent on time. Unfortunately we had to give them notice due to the need for our family to reside in the home. We did not come to this decision easily as they have been great tenants.” [reproduced as written]

The landlord explained that this letter had been provided before they had inspected the rental unit and determined the tenant had smoked in the unit.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 23 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit on the day the tenant is entitled to possession of the unit or on another mutually agreed upon day. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 23(4) requires the landlord to complete a Condition Inspection Report with both the landlord and tenant signing the report. Pursuant to Section 18 of the Residential Tenancy Regulation the landlord must provide a copy of the Report to the tenant within 7 days after the inspection has been completed.

The intent behind this requirement is so that there is documentary evidence that both parties agree on the Report as recording the condition of the unit at the start of the tenancy.

While the landlord has submitted a letter from the previous owner that comments on the condition of the rental unit a month prior to the start of the tenancy I note there is no

documentation confirming the condition of the rental unit on or shortly after the start of the tenancy.

When both parties provide equally plausible, but differing, testimony recounting events during the tenancy, the party with the burden of proof must provide additional evidence to corroborate their claim.

From the testimony of both parties, I find the tenant has provided verbal testimony disputing the landlord's version of events, particularly in relation to smoking in the rental unit. In addition, I find the landlord has failed to provide any additional evidence that can corroborate that the tenant or his guests smoked in the rental unit.

While the landlord submitted photographs of plastic heating vent covers that show the covers yellowed prior to cleaning and then white after cleaning, there is no evidence before me as to what condition these covers were in at the start of the tenancy or that the yellowing was caused by smoking.

As a result, I find the landlord has failed to establish that the tenant had violated the Act, regulation or tenancy agreement, specifically related to smoking. As a result I find the landlord's claim for repairs due to smoking fails.

Further, as the landlord has provided no evidence of the condition of the trim in throughout the rental unit at the start of the tenancy I find the landlord has failed to provide sufficient evidence to confirm that any damage to the rental unit trim resulted during the tenancy.

The landlord has referred me to the tenant's photographs of the trim at the start of the tenancy and compare to her photographs at the end of the tenancy. Upon review of these photographs, I note that in both sets of photographs the weather stripping is tattered and that there are dents and scrapes on the door frames pictured.

As such, I find the landlord has failed to provide any evidence to substantiate this damage was caused during the tenancy or that the tenant should be held responsible for the damage.

Finally, in regard to the landlord's claim for replacement blinds, I find again that the landlord has failed to provide any evidence of the condition of the blinds at the start of the tenancy. Therefore, the landlord cannot provide any evidence to show the tenant should be responsible for the replacement blinds.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the parties agreed the tenancy ended and the tenant provided the landlords with his forwarding address by May 31, 2015 and the landlords submitted their Application for Dispute Resolution on June 8, 2015, I find the landlords filed their Application within the requirements and have complied with Section 38(1). As such, I find the tenant is not entitled to double the amount of the security deposit.

Conclusion

Based on the above, I dismiss the landlords' Application for Dispute Resolution in its entirety.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$475.00** comprised of \$425.00 security deposit owed and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: November 23, 2015

Residential Tenancy Branch

