



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on October 2, 2015 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this and a previous application - Section 72.

The Landlord applied on November 9, 2015 for:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to return of the security and pet deposit?

Did the Tenant leave the unit unclean and with damages?

Background and Evidence

The tenancy started on May 1, 2015 and ended on June 30, 2015. Rent of \$1,650.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$825.00 as a security deposit and \$825.00 as a pet deposit.

Although the Parties did a walk through at move-in the Landlord did not complete a move-in condition report. The security deposit has not been returned to the Tenants.

The Parties agree that a walk through was done at move-out. The Landlord states that the Landlord filled out a paper that the Tenant refused to sign. The Tenant states that there was no official document to sign. The Landlord provided a document dated July 1, 2015 outlining the issues in dispute and including notation of the condition of the unit.

The Tenant states that its forwarding address was provided in writing to the Landlord on July 1, 2015 when the Parties did a walkthrough of the unit. The Tenant states that the address was written on several pieces of paper including a paper that the Landlord had. The Landlord states that the Tenant did not leave a forwarding address and did not ever provide a forwarding address other than as contained in the Tenant's application. The Tenant claims return of the security and pet deposits. The Tenant claims return of the filing fee for the current application and for a previous application.

The Landlord states that the Tenant left the unit unclean and damaged, provided photos and claims as follows:

- \$200.00 for the cost of cleaning the unit at move-out, invoice provided. The Landlord states that nothing was cleaned. The Tenants state that the whole unit was cleaned at move-out. The Tenants state that the photo of the fridge was taken at the move-out walk through, that the fridge had been cleaned before that and that the food was taken out of the fridge at the end of the walk through. The Tenants state that the unit was not clean at move in and that the Tenants spend several days cleaning the unit. The Landlord states that she spent a full day cleaning the unit at move-in;

- \$50.00 for the cost of lawn care at move out, invoice provided. The Parties agree that the Tenants were to keep the lawn cut. The Tenant states that the lawn was not cut at move-out but was mowed once during the tenancy;
- \$45.53 for the cost to replace a smoke detector. The Landlord states that a smoke detector was in place and working at the outset of the tenancy. The Tenant states that the smoke detector was not working at the onset of the tenancy and had been placed in a closet;
- \$80.00 for the cost to dispose of the Tenant's left behind furnishings and garbage. The Landlord states that the Tenants placed their garbage in the neighbour's bins and that the neighbour became upset and threw the garbage out of the bins. The Landlord provided an invoice. The Tenant states that the furnishings are not theirs and they do not know how they showed up outside the rental unit. The Tenants state that the Landlord insisted that no garbage be placed in the neighbour's bins so the Tenants placed the garbage in their car and removed it all;
- \$25.00 for the cost of cleaning up dog feces from the yard. The Tenant states that they always picked up after their dog and deny that their dog left any feces. The Tenant states that stray or neighbouring dogs would often come into the yard.

The Landlord states that the Tenants brought a dog into the unit without the Landlord's knowledge or consent and that this was not allowed. The Landlord claims either an additional pet security deposit of \$825.00 or retention of the pet security deposit. The Landlord states that the Tenant parked a vehicle in a location that was not allowed and claims \$200.00.

The Landlord claims the costs of providing photos as evidence.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Although the Tenant states that a forwarding address was left with the Landlord at move-out there is no evidence to support this assertion such as witness or photo evidence. The Landlord's denial of having received a forwarding address was equally persuasive. After some consideration of the Parties oral evidence I find that the Tenant has failed on a balance of probabilities to substantiate that a forwarding address has ever been provided to the Landlord outside of the application. As I do not consider an application to constitute fulfillment of a triggering event, I find that the Landlord is not required to pay the Tenants double the security deposit.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Although the Landlord's supporting evidence such as photos or condition reports are either missing or limited, I note that all the invoices include the contact information for the persons who did the work being claimed. There is no indication that these invoices are fraudulent and while the Tenant's oral evidence in relation to the fridge sounded plausible I consider that the Tenants otherwise provided no supporting evidence of having left a clean and empty unit. As such I find on a balance of probabilities that the Landlord has substantiated the costs of **\$200.00** to clean the unit and **\$80.00** for removing furnishings and garbage. As none of the invoices indicate the removal of dog feces and considering the Tenant's persuasive evidence that other dogs were around, I find that the Landlord has not substantiated the claim to remove the feces and I dismiss this claim. As there is nothing to confirm that a working smoke detector was present at the outset of the tenancy and considering

the Tenant's equally plausible evidence that one was not working or in place at the onset of the tenancy, I find that the Landlord has failed to substantiate that the Tenant caused any damage to the smoke detector and I dismiss this claim.

Based on the undisputed evidence that the tenancy agreement required the lawn to be maintained and that lawn was not cut at move-out I find that the Landlord has substantiated that the Tenant did not maintain the lawn as required. However given that the invoice for the cost being claimed includes a cost for trimming bushes and there is nothing requiring the Tenants to be responsible for this, I find that the Landlord has not substantiated the costs claimed and I dismiss the claim for lawn maintenance.

Where a party seeks compensation there must be an actual loss associated with the claim. Given that there is no evidence of loss or costs associated with the Tenant having a dog or parking by the unit, whether or not allowed by the tenancy agreement, I find that the Landlord has not substantiated these claims and they are dismissed. As there is no provision under the Act for the recovery of evidentiary costs for the dispute process I dismiss the claim for the costs in relation to the photos.

As the Landlord's application has met with limited success I decline to award recovery of the filing fee. Deducting the Landlord's total entitlement of **\$280.00** from the combined security and pet deposit plus zero interest of **\$1,650.00** leaves **\$1,370.00** owed to the Tenant. As the Tenant has been successful in the return of the majority of the security deposit I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for the current application and that the Landlord therefore owes the Tenant a total of **\$1,420.00**. Although the Tenant made no submissions or given oral evidence in relation to its claim for a previously paid filing fee, there is no basis for the Tenant to obtain recovery of a filing fee for a separate proceedings and I dismiss the claim for recovery of any additional filing fee.

Conclusion

I Order the Landlord to retain **\$280.00** from the security and pet deposit plus interest of **\$1,650.00** in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$1,420.00**. If necessary, this order may be filed in the Small Claims 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: January 08, 2016

Residential Tenancy Branch

