



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNSD, FF
Tenant: MNSD, MNDC, OLC, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking to retain part of the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of double the security deposit, for loss or damage under the Act, regulations or tenancy agreement, for the Landlords to comply with the Act, regulations or tenancy agreement and to recover the filing fee.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on July 27, 2015, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on July 23, 2015, in accordance with section 89 of the Act.

The Landlords and Tenants both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are the Landlords entitled to retain all or part of the Tenants' deposits for damages to the rental unit?

Tenant:

1. Are the Tenants entitled to recover double the security deposit?

Background and Evidence

This tenancy started on July 1, 2014 as a fixed term tenancy with an expiry date of June 30, 2015. Rent was \$1,600.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$800.00 at the start of the tenancy.

The Tenant said they moved out of the rental unit on June 30, 2015, and gave the Landlords their forwarding address in writing on June 30, 2015. The Landlord said she received the Tenants' forwarding address on June 30, 2015 when they did the move out condition inspection report. The Tenants said there was a move in condition inspection report completed and signed that they agreed to but the move out condition inspection report they did not agree to. The Tenants said the Landlords said there was damage to the kitchen cupboards and the Landlord requested to retain \$200.00 of the security deposit to repair the cupboards. The Tenant said the damage to the cupboards was caused by heat coming from the toaster on the counter when in use. The Tenants said they stopped using the toaster when they saw the cupboard doors were separating. The Tenant said they used the toaster normally and the toaster was in the only place on the counter that had a plug in. The Tenants said this was normal wear and tear or the cupboard doors were of faulty construction or inferior quality. The Tenants said they are not responsible for the damage to the cupboard doors. The female Landlord said the cupboard doors were good quality.

The Tenants continued to say that since they have not received their security deposit back and they did not receive an application from the Landlord within 15 days of the end of tenancy they have applied for double their security deposit of \$800.00 in the amount of \$1,600.00 as per the Act. The Tenant said they would like to recover the filing fee of \$50.00 as well.

The female Landlord said she retained the Tenants' full \$800.00 security deposit even though she had applied to the Residential Tenancy Branch for \$324.00 of the security deposit for damage to the kitchen cupboards of \$224.00 and a \$100.00 strata fee. The Landlord said she was a new landlord so this is her first time making a claim. The female Landlord said the repairs to the cupboards actually cost \$210.00 and she said she has paid the \$100.00 strata fee. The Landlord continued to say there was a move in condition report that shows no damage to the cupboards and is indicated as new. The Tenants said the cupboards were not new as the Landlord/owner had previously lived in the unit.

The Arbitrator asked the Landlord why the condition inspection reports or other evidence that showed the damage to the cupboards were not submitted for the hearing. The Landlords said they did not think or knew that they had to send these things in for the hearing. The Arbitrator indicated that evidence is required to support a claim if an applicant wants to be successful. The female Landlord said she understood but she did not know that was required.

The male Landlord asked the Tenants if the kitchen cupboards were damaged during the tenancy. The male Tenant said the cupboards were damaged but it was normal wear and tear and was not caused by any inappropriate action of the Tenants. The male Landlord said the Tenants misused the toaster and this caused the cupboards to heat up and separate. The male Tenant said they used the toaster in a normal manner in the spot on the counter where the plug was. The male Tenant said this was normal use of the toaster.

Further the female Tenant said that the Landlords' claim for the strata fee was not told to them and it is not in the tenancy agreement therefore it is not their responsibility.

No tenancy agreement was submitted as evidence for the hearing.

The Landlord said in closing that the kitchen cupboards were damaged and they have repaired them at a cost of \$210.00 and they have paid the strata fee of \$100.00 that they are requesting to recover. As well the Landlord said she retained the full deposit of \$800.00 as she did not understand what she should do.

The Tenants said that they requested double their deposit to be returned as when they filed their application they had not received the Landlords' application so they were unaware that the Landlords had applied to retain part of their security deposit.

Analysis

Sections 23 and 35 of the Act say that landlords and tenants must complete a move in and move out condition inspection report to establish the condition of the rental unit on move in and on move out. The purpose of completing these reports is to establish evidence for the condition of the rental unit on move in and move out so that in a dispute about damage to the rental unit there a reference point or base line for the condition of the rental unit. As well if there is disagreement on the condition or how damage happened then the condition reports can document that information. In this situation both parties agree the reports were completed but neither party submitted the reports for the hearing. In fact the Landlord only submitted their application and an invoice for repairs of the kitchen cupboards. The Tenants' only submitted their application and proof of service information. Both applications were made in July, 2015 so both parties had ample time to understand the process and to submit any evidence to corroborate their claims.

The Landlords say the damage to the kitchen cupboard doors is more than normal wear and tear and the Tenants say the damage to the cupboard doors is normal wear and tear or because the cupboards may have been poor quality. The Landlords have not

provided any evidence like the condition inspection reports or photographs to support their claims. Therefore it is just the Landlords' word against the Tenants' word that it is damage verses normal wear and tear. The burden of proving a claim lies with the applicant and when it is just the applicants' word against the respondents' word that burden is not met. Consequently, I find the Landlords have not established grounds to prove that the Tenants damaged the kitchen cupboard doors because of actions or neglect by the Tenants during the tenancy. I find this due to a lack of evidence provided by the Landlords.

Further the Landlords are claiming the \$100.00 strata fee that was charged to the Landlords when the Tenants moved out. Again the Landlords have not provided a paid receipt to prove a loss, a tenancy agreement to show strata fees are part of the tenancy or strata rules to indicate there was a strata fee for moving out of the unit.

Consequently I dismiss the strata fee claim of \$100.00 as well as the Landlords' application due to lack of evidence to establish grounds for the Landlords' claims.

As the Landlords have been unsuccessful in this matter I order the Landlords to bear the cost of the filing fee of \$50.00 that they have already paid.

With respect to the Tenants' application for double their security deposit of \$800.00 in the amount of \$1,600.00.

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and

- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from both parties testimony that the Tenants did give the Landlords a forwarding address in writing on June 30, 2015. The Landlord applied to retain \$324.00 of the Tenants' security deposit on July 14, 2015 in accordance to the Act, but the Landlords did not return the balance of the Tenants' security deposit of \$476.00 within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenants. Consequently I find for the Tenants and grant an order for double of part of the security deposit in the amount of $\$476.00 \times 2 = \952.00 and as the Landlord has been unsuccessful in retaining the balance of the Tenants' security deposit of \$324.00; I order the Landlord to return this amount of \$324.00 as well forthwith.

As the Tenants' have been partially successful in this matter I order the Tenants to recover their filing fee from the Landlords in the amount of \$50.00.

A monetary order has been issues to the Tenants for the following:

Double part of the security deposit	\$ 952.00	
Balance of security deposit	\$ 324.00	
Filing fee	\$ 50.00	
Balance owing		\$ 1,326.00

Conclusion

The Landlord's application is dismissed without leave to reapply.

A monetary order has been issued to the Tenants' for \$1,326.00.

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 05, 2016

Residential Tenancy Branch

