



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND
MNSD, OLC, FF

Introduction

This hearing concerns 2 applications:

- i) by the landlord for a monetary order as compensation for damage to the unit, site or property; and
- ii) by the tenants for a monetary order for compensation reflecting the double return of the security deposit and pet damage deposit / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from September 01, 2012 to August 31, 2013. Thereafter, tenancy continued on a month-to-month basis. Monthly rent was due and payable in advance on the first day of each month. Rent at the outset of tenancy was \$1,100.00, but had increased by the time tenancy ended. A security deposit of \$550.00 and a pet damage deposit of \$100.00 were collected. A move-in condition inspection report was not completed. The landlord testified that the unit was relatively new at the time when the subject tenancy began, and that there had only been 1 set of tenants in the unit prior to the start of this tenancy.

The tenants informed the landlord on June 30, 2015 of their intention to end tenancy effective July 31, 2015. While the parties did a walk-through of the unit together on July 31, 2015, a move-out condition inspection report was not fully completed and signed by

both parties at that time. It is understood that a new tenant began moving into the unit during the afternoon of July 31, 2015.

On August 13, 2015 the parties met together at the unit to discuss the final disposition of the security deposit and pet damage deposit. Ultimately, however, a mutual agreement as to the disposition of the deposits was unable to be reached, and the landlord continues to hold both deposits in trust. The tenants take the position that the condition of the unit at the end of tenancy reflected reasonable wear and tear.

The tenants testified that they provided the landlord with their forwarding address in writing on July 31, 2015. The landlord disputes this. However, the parties agree that by way of text message dated August 13, 2015 the tenants provided the landlord with their forwarding address.

The landlord's application for dispute resolution was initially filed on August 29, 2015, and subsequently amended on August 31, 2015. The tenants' application for dispute resolution was initially filed on August 31, 2015, and subsequently amended on September 02, 2015.

Analysis

At the outset, the particular attention of the parties is drawn to the following legislation:

ACT

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

REGULATION

Part 3 – Condition Inspections (sections 14 to 21)

Further, section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

Based on the documentary evidence and testimony, the various aspects of the respective applications and my related findings are set out below.

LANDLORD

\$200.00: *estimated cost for repairs and painting of drywall*

\$54.72: *materials required for repairs to molding*

\$75.00: *estimated value of landlord's related labour for repairs (2 hours)*

\$24.63: *estimated cost of paint for molding*

\$38.98: *oil lift product for driveway*

\$75.00: *estimated value of landlord's related labour for oil removal (2 hours)*

In view of the existence of a tenancy in the unit prior to the start of the subject tenancy, in consideration of reasonable wear and tear during the subject tenancy which spanned a period of nearly 3 years, and in the absence of comparative results from fully completed move-in and move-out condition inspection reports, I find that all aspects of the landlord's application must be dismissed.

TENANTS

\$1,100.00: *(2 x \$550.00) double return of security deposit*

\$200.00: *(2 x \$100.00) double return of pet damage deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section 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 either repay the security / pet damage deposits, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security / pet damage deposits, and must pay the tenant double the amount of the security / pet damage deposits.

In the circumstances of this dispute, I find that the tenants provided the landlord with their forwarding address by way of text message dated August 13, 2015. As the landlord's initial application for dispute resolution was filed on August 29, 2015, I find that the application was filed outside the statutory 15 day period. Further, however, I note that in his application the landlord has not specifically filed a claim against the security deposit or the pet damage deposit. In the result, I find that the tenants have established entitlement to the full amount(s) claimed.

\$50.00: *filing fee*

As the tenants have succeeded with the principal aspect(s) of their application, I find that they have also established entitlement to recovery of the full filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,350.00**. Should it be necessary, this order may be served on the landlord, 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: March 02, 2016

Residential Tenancy Branch

