



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and to recover the filing fee for this application. The tenants have filed an application seeking the return of double the security and pet deposits and to recover the cost of filing this application. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on February 15, 2008 and ended on September 30, 2015. The tenants were obligated to pay \$820.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$375.00 security deposit and a \$375.00 pet deposit. The tenants stated that they gave the landlord their forwarding address by e-mail, fax and a written letter dropped off in the landlords' mailbox on August 23, 2015. The tenants stated the landlord did not return their deposits within the timelines as is required by the Act. The tenants stated that the landlord eventually returned their deposits, but in three different installments, with the final payment coming on November 9, 2015.

The tenants stated that they are agreeing that the landlord is entitled to \$71.79 for unpaid utilities for the final installment of their tenancy. The tenants stated that they do not agree with the landlords' claim that they are to pay for utilities' from September 2013 – June 2014. The tenants stated that the rental agreement is very "murky" and not clear as to the terms of the tenancy. The tenants stated that they own a professional carpet cleaner as the male tenant has cleaned carpets for many years. The tenants stated that the carpets were cleaned at a professional level as agreed upon in their tenancy

agreement. The tenants stated that they should be entitled to the return of double their deposits minus the amounts returned and the \$71.79 for the last utilities bill.

The landlords gave the following testimony. The landlords stated that they feel that because the tenants did not clean the carpets properly and that there were unpaid utilities, they were entitled to retain the deposit. The landlords stated that they weren't sure if the tenants paid a pet deposit but after the tenant verified that she did, they returned all of the deposits to the tenants. The landlords stated that the rental agreement included utilities for the first 18 months and afterwards the tenants would be responsible for them. The landlords stated that the tenancy agreement required the tenants to have the carpets professionally cleaned at the end of the tenancy. The landlords stated that the tenants did not clean the carpets sufficiently which required them to hire a professional carpet cleaner to have them done. The landlords stated that they are seeking \$674.51 for utilities and \$167.27 for carpet cleaning.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, **the party claiming the damage or loss bears the burden of proof**. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Firstly, I will deal with the tenants' application and my findings as follows.

The tenants stated that they are applying for the return of double the security deposit and pet deposit as the landlords have not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) 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.

The landlords confirmed that they did not have the tenants' authorization to withhold any of the deposit nor did they have an order from the Branch allowing them to do so. The landlords also confirmed that they received the tenants forwarding address in writing on September 30, 2015 and did not return the entire amount within fifteen days or file an application for dispute resolution. Based on the above I find that the tenants are entitled to the return of double the security and pet deposit. The tenants originally posted \$750.00 in deposits X the doubling provision pursuant to Section 38 of the Act = \$1500.00 minus the amount they received from the landlords of \$750.00 = \$750.00 payable to the tenants. The tenants are also entitled to the recovery of the \$50.00 filing fee for a total award of \$800.00.

I address the landlords' claims and my findings as follows.

1. Unpaid Utilities - \$674.51

The landlords stated that the tenancy agreement from 2008 included utilities for 18 months and thereafter the tenants would be responsible for the utilities. The landlords stated that the amount they are seeking is for September 2013 – June 2014 as the subject tenants were the only ones living in the home at that time.

The tenants dispute this claim. The tenants stated that the landlords' tenancy agreement was vague at best and didn't outline the tenants' responsibilities. The tenants stated that they were never shown any bills and that the parties eventually came to an agreement about utilities on August 28, 2014. The tenants stated that the agreement was for August 28, 2014 and forward; not the time frame as claimed. The

tenants stated that they acknowledge that they owe the landlords \$71.79 in unpaid utilities and are content with paying them that.

After carefully reviewing the documentation before me I agree with the tenants' that the tenancy agreement is vague after the initial 18 month period. Both parties offered certain percentages of what would be fair and equitable yet there was no signed agreement to execute that. Both parties agree that the only time there was an agreement was from August 28, 2014. The landlords' documentation was simply lacking to be awarded the amount as sought. Based on the above and the tenants accepting responsibility for the final payment of utilities that remains unpaid, I find that the landlord is entitled to \$71.79.

2. Carpet Cleaning - \$167.27

The landlords stated that the tenants cleaned the carpets but not to an acceptable level. The landlords stated that they hired a carpet cleaning company to conduct the work and it cost them \$167.27. The landlords stated that they had a bill to support this claim but did not submit it for this hearing.

The tenants stated that they cleaned the carpets themselves as the male tenant has his own professional carpet cleaner. The male tenant stated that he has cleaned carpets for many people for many years and that he did an excellent job. The tenants stated that they have met their obligation in accordance with the legislation and the tenancy agreement.

The landlords claim falls for two reasons; firstly they were unable to provide a receipt to support their claim and to verify the amount of cost they incurred, and secondly the condition inspection report was incomplete. The landlords stated that they left the move in report with the tenant but she didn't fill it out properly; the condition inspection report is to be conducted with both parties present as stated under Section 23 and 35 of the Act, not just the tenant. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

As the landlords have been partially successful in their application I find that they are entitled to half of their filing fee of \$100.00 for an award of \$50.00.

The landlords are entitled to \$121.79. The tenants are entitled to \$800.00. In applying the landlords' award against the tenants leave an amount of \$678.21 payable to the tenants.

Conclusion

The tenants have established a claim for \$678.21. I grant the tenants an order under section 67 for the balance due of \$678.21. 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: June 06, 2016

Residential Tenancy Branch