



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 November 26, 2015 for:

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

The Landlord applied on April 7, 2016 for:

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

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

Issue(s) to be Decided

Are the Tenants entitled to return of the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on May 1, 2015 and ended on September 15, 2015. During the tenancy rent of \$1,250 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit and \$600.00 as a pet deposit. On May 1, 2015 The Parties mutually conducted a move-in inspection and completed a report with a copy provided to the Tenants. The Tenants provided their forwarding address by registered mail on October 30, 2015.

The Landlord has not returned the security deposit and the Tenants claim its return.

The Landlord states that when the Tenants first gave notice the Landlord offered an opportunity to conduct a move-out inspection for September 15, 2015. The Landlord states that the offer was made orally and possibly by text but that the Landlord got no response. The Landlord states that he tried to call one of the Tenants and as far as the Landlord knows the Landlord left a message about waiting for the keys and conducting an inspection. The Tenants state that the Landlord never contacted them for any inspection but that the Tenant tried to contact the Landlord twice on the day of move-out without any response from the Landlord.

The Landlord states that the Tenants failed to leave the unit clean and without damages and claims as follows:

- \$334.88 for the loss of a gazebo that blew over on a windy day. The Landlord states that the Tenants were told to remove the cloth top during inclement weather and that they failed to do so. The Landlord agrees that at the time the Tenants told the Landlord of the damage the Landlord told the Tenants just to throw the gazebo out. The Landlord states that the gazebo was not replaced;
- \$125.00 for the cost of cleaning the unit. No invoice or photos were provided. The Tenant states the unit was fully cleaned at move-out;
- \$20.41 for the cost of new keys. No invoice was provided. The Landlord states that the Tenants failed to return the keys. The Tenants states that the Landlord told the Tenants not to bother returning the keys and provided an email to this effect;
- \$68.25 for the cost of blinds. The Landlord states that the plastic blinds were a couple of years old and were not working at the end of the tenancy. The Landlord states that the blinds have not been replaced and no discount has been given to the new tenants for the damaged blinds damaged. There are no photos of the blinds. The Tenant states that these blinds were barely touched during the tenancy and that the Tenants were not aware of them being broken. The Tenants deny causing any damage; and
- \$480.63 for the estimated cost to replace linoleum that was left gouged. The Landlord states that the linoleum has not been replaced and no discount has been provided to the current tenants for having damaged linoleum. The Landlord

states that it may not replace the linoleum or may replace it eventually. The Tenants state that they do not know what the Landlord is talking about and do not ever recall any gouge.

The Landlord states that it took him 10 hours of time to prepare for the dispute and claims \$250.00.

Analysis

Section 36(1) of the Act provides that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has offered at least two opportunities for inspection and the tenant has not participated on either occasion. The Landlord's evidence of offering a second move-out inspection is vague. The Tenants evidence that no contact was made by the Landlord on the other hand is clear. I therefore prefer the Tenant's evidence and find that two offers for an inspection were not given to the Tenants. As a result I find that the Tenants' right to return of the security deposit has not been extinguished.

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. Based on the undisputed evidence of the forwarding address and considering that the Landlord did not apply until several months after receipt of the forwarding address I find that the Landlord must now pay the Tenants double the combined pet security deposit in the amount of **\$2,400.00**. As the Tenants' application has been successful I find that the Tenants are also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$2,450.00**.

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. Nothing in the Act provides for compensation to a party for the cost of participating in the dispute resolution proves other than in relation to recovery of the filing fee. I therefore dismiss the claim for \$250.00 for the Landlord's time.

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, 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.

Given that the Landlord told the Tenants to throw out the gazebo without inspecting for possible repair and considering that the gazebo was not replaced, I find that the Landlord has not substantiated that the Tenants caused the Landlord any loss and I dismiss the claim in relation to the gazebo. Given the lack of an invoice in relation to the keys I find that the Landlord has not substantiated the costs claimed for their replacement and I dismiss this claim. Given that the blinds have not been replaced, the linoleum has not been repaired any may not be and no rental deduction was given to the new tenants I find that the Landlord has not substantiated any loss from the blinds or linoleum and I dismiss these claims. Given the lack of evidence to support that the Tenants left the unit unclean or that the Landlord incurred costs to clean the unit and considering the Tenants evidence of having cleaned the unit I find that the Landlord has not substantiated the claim in relation to cleaning and I dismiss this claim.

As none of the Landlord's claims have been substantiated I dismiss the claim for recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$2,450.00**. 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: July 4, 2016

Residential Tenancy Branch