



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards



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DECISION

Dispute Codes FF, MND, MNDCM, MNSD

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$1100 for the return of their security deposit.
- b. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$1375 for unpaid rent and damages
- b. An order to retain the security deposit
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered. Both sides presented a large number of documents.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently serve on the other by mailing, by registered mail to where the other party resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenants are entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a 6 month fixed term written tenancy agreement that provided that the tenancy would start on September 1, 2015 and end on March 1, 2016. The rent is \$1100 per month payable on the first day of each month. The tenant paid a security deposit of \$550 and a pet damage deposit of \$550 at the start of the tenancy. The tenants gave the landlord notice to end and vacated the rental unit at the end of February 2016.

Tenant's Application::

I do not accept the tenant's submission that the landlord's claim against the security deposit should be dismissed on the basis that the landlord failed to participate with the tenant in a pre tenancy inspection and a post tenancy inspection. The tenants lived in Ontario. The tenant requested a representative of his employer to look at the rental unit in order to determine whether the rental unit was appropriate. The landlord went through the rental unit with the representative of the employer and left the Condition Inspection Report with the representative to give to the Tenant with the request to make any additions the tenants thought was appropriate. The landlord also lives out of town. The tenant arrived a few days later. He made additions of problems he saw in the Condition Inspection Report and sent a copy to the landlord. The representative of the employer provided an affidavit saying she was not the "legal agent" of the tenant. I disagree. In my view the actions of the tenant in asking her to look at the rental unit in the presence of the landlord gave her apparent authority. At no time did the tenant advise the landlord he considered she did not have authority until the end of the tenancy. Further, the tenant completed the Condition Inspection Report and made a number of additions showing problems. The landlord's claims does not relate to these problems.

At the end of the tenancy both parties were present at the start of the condition inspection. The tenants testified they left because of the tension created by the landlord. While this affects how much weight I should give to the post tenancy condition inspection report it does not prevent the landlord from making a claim against the security deposit and pet damage deposit.

At any rate I determined this issue is moot. Section 72(2) provides as follows

Director's orders: fees and monetary orders

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

...

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Analysis

The landlord filed a claim against the security deposit within 15 days of the later of the end of tenancy or the date the landlord received the tenant's forwarding address in writing. As a result the tenants are not entitled to the doubling of the security deposit. However, they are entitled to

reimbursement of the security deposit and pet damage deposit after the claims of the landlord are determined.

Landlord's Application

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

With respect to each of the landlord's claims I find as follows:

- a. Based on the photographs and evidence presented I determined the landlord is entitled to the sum of \$150 for the cost of cleaning. I am satisfied the tenants failed to complete the cleaning to the standards required by the Residential Tenancy Act.
- b. The landlord claimed \$600 for the cost to replace an antique fridge that was left on the outside porch. The landlord testified he used the outside fridge to put his beer in. The tenant moved it from the outside porch to a location that was not covered and it no longer works. The tenant testified the overhang where the landlord left the fridge was exposed to the weather. He disputes the value claimed by the landlord. I determined the landlord is entitled to compensation as the tenants conduct contributed to the damage to the fridge. However, the landlord failed to prove that he was using this as an antique and thus failed to prove he is entitled to the inflated value an antique might be worth. The landlord left it outside on a porch under an overhang exposed to the weather.. This is not the conduct of a person taking care of an antique. Further, the evidence from the internet is not satisfactory. I determined both parties were responsible for the damage and the landlord's share for the cost of a functional fridge to replace this is \$150.
- c. The landlord claimed the sum of \$575 for the cost of repair a ceiling that was damaged by water. The tenant alleged the water damage was caused by a leak in the roof. However, the landlord has since sold the rental property and he testified the inspector did not find a problem with the roof leaking. The landlord suggests the damage might be caused by the tenant's use of a humidifier in the upstairs portion. The tenants deny this. The landlord also suggests the problem was caused by a relative of the tenants looking in on the house the weeks shortly before the end of the tenancy when the tenants were away on holidays.

The Act provides that the tenant is responsible to repair damage caused by the actions or the neglect of the tenant or person permitted on the rental property by the Tenants. I

determined the landlord failed to prove the tenants were negligent. As a result I dismissed this claim.

Analysis - Monetary Order and Cost of Filing fee:

I ordered the tenants to pay to the landlord the sum of \$300 plus \$100 for the cost of the filing fee for a total of \$400.

Security Deposit:

I determined the security deposit plus pet damage deposit totals the sum of \$1100. I ordered the landlord may retain the sum of \$400 from the security deposit and pet damage deposit. I further ordered that the Landlord pay to the Tenants the balance of the security deposit and pet damage deposit in the sum of \$700. I dismissed the Tenants claim for the cost of the filing fee as the tenants were unsuccessful in their claim to keep the entire deposit.

It is further Ordered that this sum be paid forthwith. The Tenants are given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 15, 2016

Residential Tenancy Branch

