



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought the following: a monetary order for damage to the rental unit, unpaid rent, and compensation for loss; authority to retain the security and pet damage deposit; and, recover of the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. What should happen to the Tenants' security and pet damage deposit?
3. Are the Landlords entitled to recovery of the filing fee paid?

Background and Evidence

The Landlord, T.K., testified as to the terms of the tenancy as follows.

The tenancy was for a fixed one month term, for the month of October 2015, wherein the Tenants agreed to pay rent in the amount of \$5,045.00. The Tenants also paid \$5,045.00 in deposits including a security deposit in the amount of \$2,022.50 and a \$2,022.50 pet damage deposit.

T.K. stated that the Tenants moved out on November 2, 2015. She further testified that tThe move out inspection was performed on that date. Only one page of the report was provided in evidence. During the hearing I requested ~~during the hearing~~ that the Landlords provide me with a complete copy of the move out condition inspection report. I confirm that this report was provided to me following the hearing and is considered in this my Decision.

The Condition Inspection Report confirms that the Tenants provided their forwarding address in writing on November 2, 2015.

The Landlords sought compensation for unpaid rent for November 2015 in the amount of \$5,045.00. Initially T.K. stated that she agreed the Tenants could move out at this time. When I asked if the rental unit was re-rented for November 1, 2015 she then stated the Tenants requested that they be able to stay until November 2, 2015 and she did not agree to this request.

T.K. testified that she attempted to re-rent the rental unit but prospective renters complained about the stairs. She confirmed that the rental unit was re-rented as of December 1, 2015.

The Landlords applied for dispute resolution on November 27, 2015. Despite this being 25 days after the Landlords received the Tenants forwarding address T.K. insisted this was within the 15 days required by the *Residential Tenancy Act*.

The Landlords also sought the sum of \$250.00 for cleaning. T.K. stated the rental unit had six bedrooms and three bathrooms and was not cleaned as required. Photos of the rental unit showed pet hair and debris under the stove. Introduced in evidence was an invoice from I.H. wherein a total of \$91.88 was charged for cleaning. The balance of the invoice relates to charges for I.H. performing the move out inspection for the Landlords. Also introduced in evidence was an invoice from Q. Cleaning Service for \$150.00 for cleaning on November 6 and November 12, 2015. The total of the receipts submitted in evidence was \$241.88.

The Landlords also sought the sum of \$1,000.00 for replacement of the sofa as they claimed it was damaged by the Tenants' dog's hair. Photos introduced in evidence confirmed the dog hair was embedded in the sofa. The Landlords claimed that the subsequent renters had pet allergies such that the sofa requires replacement.

Although claimed on the monetary orders worksheet filed in evidence, T.K. confirmed during the hearing that they did not seek \$800.00 for the replacement of the refrigerator.

In reply to the Landlords' claims the Tenants submitted as follows.

The Tenants counsel submitted that the Landlord agreed they could move out on November 2, 2015. She stated that the Landlord was aware they would only stay a month as the Tenants had purchased a home and only rented the rental unit until they could move into their new home.

The Tenants' counsel confirmed the Tenants agreed the rental unit could use some cleaning. They dispute, however, the amount claimed.

The Tenants' counsel submitted that the sofa was not replaced, merely put in storage and that they were opposed to the amounts claimed by the Landlords in this regard as they had not in fact suffered a loss.

The Tenants submit that the Landlords failed to file for dispute resolution within 15 days of receipt of their forwarding address such that they are entitled to return of double their deposits paid.

Analysis

I will first deal with the Tenants deposits.

Section 38 of the *Residential Tenancy Act* deals with security and pet damage deposits and provides as follows:

Return of security deposit and pet damage deposit

38 (1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].
- (6) 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.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlords could retain any portion of the deposits paid.

The Landlord testified the move out condition inspection report was completed on November 2, 2015 and that she received the Tenants' forwarding address on that date.

The November 2, 2015 date was extensively canvassed with the Landlord as she testified the move out condition inspection report was completed on that date, and she further testified that it was on that date she received the Tenant's forwarding address. When I informed the Landlord she applied for dispute resolution beyond the 15 days required in section 38 of the *Residential Tenancy Act*, she insisted she had applied within time. At no time during the hearing did she allege that the report was completed on another date, nor did she allege that she received the Tenants' forwarding address on any other date, other than November 2, 2015.

Further, email correspondence filed in evidence, specifically an email from the Landlord, I.H., to the Landlord, T.K., sent at 7:07 p.m. on November 2, 2015 at 7:07 confirms the report was completed on November 2, 2015.

The Landlords applied 25 days after receiving the Tenants forwarding address in writing. There was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required under section 38.

The security and pet damage deposits are held in trust for the Tenants by the Landlords. If the Landlords and the Tenants are unable to agree to the repayment of the deposits or to deductions to be made to them, the Landlords *must* file an Application for Dispute Resolution *within 15 days* of the end of the tenancy or receipt of the forwarding address, whichever is later. This is provided for in section 38(1) of the *Act* and this section is mandatory.

The Landlords may only keep all, or a portion, of the deposits through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenants, they must either obtain the Tenants' consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's deposits. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **\$10,090.00**, comprised of double the security deposit (\$5,045.00) and double the pet damage deposit (\$5,045.00).

I will now deal with the Landlords' claims for monetary compensation from the Tenants.

The Landlords claim the sum of \$5,045.00 for unpaid rent for November 2015. The Landlord, T.K., testified that the tenancy was for a one month fixed term. She also initially testified that she agreed the Tenants could move out on November 2, 2015. After I questioned her as to whether the rental unit was re-rented for November 1, 2015 she then stated she did not agree the Tenants could move out on the 2nd.

The Tenants submitted that the rental was for a 1 month fixed term as they only required a month's accommodation while they waited to move into their new home. They further submit that the Landlords agreed they could stay until November 2, 2015 as the rental unit had not been re-rented.

In consideration of the testimony before me, I find that the tenancy was for a fixed one month term. I further find it more probable that the Landlords agreed the Tenants could stay until November 2, 2015 without any expectation that further rent would be paid.

The Landlord testified that she had difficulty renting the rental unit for November 1, 2015 as prospective renters expressed concerns about the stairs. This is unrelated to the subject tenancy.

In consideration of the above, I find the Landlords are not entitled to compensation for loss of rent for November 2015 and I therefore dismiss this part of their claim.

The Landlords submitted a monetary orders worksheet wherein they claimed travel time, travel tickets and postage expenses. These are not recoverable under the *Residential Tenancy Act* and the Landlords' claim for related compensation is hereby dismissed.

The Landlords claim compensation for cleaning of the rental unit and replacement of a sofa.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlords have the burden of proof to prove their claim.

The Landlord claimed \$1,000.00 for the cost to replace the sofa alleging that the Tenants' pets' hair was not removable. Counsel for the Tenants submitted that the sofa was not disposed of, merely put in storage as the new renters had a child with severe allergies; notably, the Landlords did not dispute the Tenants' claim in this regard. Further, the Landlords failed to provide proof that the sofa was disposed of and replaced.

In all the circumstances, I find that the Landlords have failed to provide sufficient evidence that they suffered a loss with respect to the sofa. I further find they have provided insufficient evidence to prove the actual amount required to compensate for the claimed loss or to repair the damage as it appears that the sofa has not been replaced. In consideration of the above, I dismiss their claim for \$1,000.00 for replacement of the sofa.

The Landlords confirmed they did not seek compensation for the replacement of the refrigerator.

The Landlords claim \$250.00 for the cost of cleaning. Receipts introduced in evidence confirm \$241.88 was paid. The Tenants concede that some cleaning was required but dispute the amounts claimed by the Landlords.

Based on the photos submitted, the evidence with respect to the size of the rental home, the Tenants' concession that some cleaning was required, as well as the invoices for cleaning, I find the Landlords have proven their claim for **\$241.88** for cleaning and I award them compensation in this amount.

As the Landlords have been partially successful, I also award them recovery of **\$25.00** of the \$100.00 filing fee paid. In total I award the Landlords the sum of **\$266.88**. This amount is to be offset against the **\$10,090.00** awarded to the Tenants such that the total amount payable to the Tenants by the Landlords is **\$9,823.12**. I grant the Tenants a Monetary Order in this amount. The Tenants must serve the Monetary Order on the Landlords and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Tenants are awarded return of double the deposits paid. The Landlords are entitled to be compensated for the cost of cleaning as well as a portion of the filing fee paid. These amounts awarded are offset against the other such that the Tenants are granted a Monetary Order in the amount of **\$9,823.12**.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 22, 2016

Date of Clarification: August 24, 2016

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Residential Tenancy Branch