



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

Both landlords and one of the named tenants attended the hearing, and the tenant also represented the other named tenant. One of the landlords and the tenant each gave affirmed testimony, and were given the opportunity to question each other.

The parties agree that evidence has been exchanged, and all evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and more specifically for cleaning the rental unit and carpet cleaning at the end of the tenancy?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on May 1, 2014 and expired on April 30, 2015, thereafter reverting to a month-to-month tenancy which ultimately ended on July 31, 2015. A copy of the tenancy agreement has been provided and the landlord testified that it contains an error in the end date of the fixed term, which reads April 30, 2014. Rent in the amount of \$1,600.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$800.00, and \$480.00 was returned to the tenants about 3 month ago. The rental unit is a single family dwelling.

The landlord further testified that the landlords were out of town when the tenant moved out and since the landlords could not be present their realtor picked up the key from the tenant. When the landlords returned they found the rental unit was not left clean so contacted the tenant. The tenant said it was in better condition than it was at move-in. The landlord disputes that and testified that the tenant never mentioned during the tenancy that the rental unit was not clean. At move out, the rental unit was not only dirty, but window frames, the dishwasher and area around the dishwasher and laundry appliances were moldy. The realtor had told the landlords that it was in better shape than expected, but was not clean and recommended that the landlords have it cleaned. The landlords hired cleaners and paid \$223.12. No receipt has been provided, however the landlords reiterated that cost to the tenants in an email which has been provided for this hearing. The rental unit was not brand new at the commencement of the tenancy but was completely cleaned professionally. Photographs have been provided which the landlord testified were taken on August 5, 2015.

The tenants did not have the carpets cleaned at the end of the tenancy and the landlords have provided a receipt in the amount of \$178.50 for that cost. The landlord testified that the carpets were heavily soiled at the end of the tenancy.

The tenants had asked for a lock to be changed during the tenancy and on February 10, 2015 the landlords had a handy-man change it. When the tenants moved out the keys were missing. A baseboard heater and light fixture were also broken, and the handy-man has completed all of those repairs. A copy of an email has been provided from the handy-man showing the work completed at a cost of \$165.22. The work includes a light, lock and baseboard heater at \$120.00 for labor, \$37.35 for the lock and \$7.87 GST. The landlord asked the tenant about the missing key and the tenant told the landlord that she didn't know where it was.

The landlords claim monetary compensation in the amount of \$223.12 for cleaning, \$165.22 for repairs, \$178.50 for carpet cleaning and recovery of the \$100.00 filing fee, for a total of \$666.84.

The tenant testified that no move-in or move-out condition inspection reports were completed. The tenant cleaned for 2 days straight before moving out, and disputes that all of the landlords' photographs were taken on August 5, 2016. Some of the photographs contain furniture belonging to the tenants and they moved out prior to that. The tenant denies that the rental unit was not left reasonably clean, but did not clean the carpets.

The tenant refers to an email from the realtor which has been provided for this hearing by the landlords that states the rental unit was in good shape and the realtor had the keys. The tenant further testified that the handy-man hired by the landlords was not a professional maintenance person. He never replaced the back door lock and the key that the tenant gave to the realtor was for the front door. The tenant never did receive a key to the back door at all.

The tenant also testified that the landlords used a portion of the rental unit for storage. The tenant has no idea which light the landlord claims is broken, and the heater was broken when the tenant moved in. The rental unit is an old house and rentals are difficult to find in the community, and the tenant didn't use the heater because it was too expensive. The tenant assumed the landlords knew about it and didn't complain about cleanliness or repairs at the beginning of the tenancy because she did not want to be seen as a problem tenant.

The tenants received an email from the landlords on August 26, 2016, which is the first that the tenant knew that the landlords were not happy with the cleanliness of the rental unit. The tenants had applied for dispute resolution and were successful in obtaining a monetary order for double the amount of the security deposit and \$50.00 for recovery of the filing fee, for a total of \$1,650.00. The landlords have given the tenants post-dated cheques for \$160.00 each month for 10 months, but not for the other \$50.00.

Analysis

I explained to the parties the legal principle of res judicata which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. The security deposit has already been dealt with at arbitration, and therefore I dismiss that portion of the landlords' application.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;

2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate any damage or loss suffered.

With respect to the landlords' claim cleaning the rental unit, it is not for me to decide whether or not it was reasonably clean at the beginning of the tenancy, but whether or not the landlords have established that the tenants failed to comply with the *Residential Tenancy Act* by leaving the rental unit reasonably clean at the end of the tenancy. The tenant testified that she cleaned thoroughly. The landlord testified that the photographs were taken on August 5, 2015 and that they show that the rental unit was not left reasonably clean, however the tenant also disputes that testifying that her furniture is in some of the photographs which was all removed on July 31, 2015. Where it boils down to one person's word over another, the claim has not been proven, and I am not satisfied that the landlords have established element 2 in the test for damages. I dismiss the landlords' application for the cost of cleaning the rental unit.

With respect to carpet cleaning, I refer to Residential Tenancy Branch Policy Guideline #1 – Landlord & Tenant Responsibility for Residential Premises, which states that a tenant is expected to have carpets cleaned at the end of a tenancy where the tenant resides in the rental unit for over a year or if the tenant has pets that are not kept in a cage. In this case, the tenant agrees that carpets were not cleaned, and I find that was a responsibility of the tenants. Therefore, I find that the landlords have established the claim of \$178.50.

The landlords also claim \$165.22 for repairs made by the handy-man. The tenant also testified that the heater was broken at the beginning of the tenancy, and has no knowledge of the broken light. The landlords also stored items at the rental unit. I am not satisfied that the landlords have established element 2 in the test for damages because there is no corroborating evidence that the items weren't already broken at the beginning of the tenancy, and that is disputed by the tenant. The same applies for the replacement lock. The relator's email states the realtor has the key, the tenant denies ever having a back door key, and again it boils down to one person's word over another. The landlords' application for the cost of the repairs of \$165.22 is dismissed.

Since the landlords have been partially successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the landlords' application for an order permitting the landlords to keep all or part of the security deposit is hereby dismissed.

I hereby grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$278.50.

This order is final and binding and may be enforced.

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: September 29, 2016

Residential Tenancy Branch