



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC MNSD FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for damages pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Both parties acknowledged receiving the other party’s application for dispute resolution including the respective evidence packages. Although a copy of the landlord’s evidence package was provided to the tenant, a copy was not on file with the Residential Tenancy Branch. The landlord submits that the evidence package was submitted with the online application. As the tenant had been served with the landlord’s evidence package, the landlord was permitted the opportunity to resubmit the evidence package to the Branch by fax during the hearing.

Issues

Is the landlord entitled to a monetary order for damages?

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on July 1, 2014 with a monthly rent of \$1100.00 payable on the 1st day of each month. The tenant paid a security deposit of \$550.00 and a pet deposit of \$300.00 at the start of the tenancy which the landlord continues to hold. The tenancy ended on April 30, 2016. A move-in condition inspection report was completed on July 11, 2014. A move-in condition inspection report was not completed. The tenant provided a forwarding address in writing to the landlord on April 30, 2016.

The landlord is claiming an amount of \$618.00 in damages consisting of carpet cleaning, general cleaning, light bulbs, and the filing fee.

The landlord testified that the carpets were professionally cleaned at the start of tenancy as noted on the move-in condition inspection report. The landlord testified the tenant had a dog and a cat in the rental unit and the carpets were stained, covered in pet hair and odor at the end of the tenancy. The landlord provided an invoice for professional carpet cleaning dated May 1, 2016, the day after the tenants vacated.

The landlord submitted an invoice dated May 1, 2016 for 4 hours of cleaning done by the landlords themselves and referred to pictures submitted as evidence of the state of the rental unit on move-out.

The landlord also submitted an online estimate for a 6 pack of light bulbs. The landlord testified that the tenant did not replace burnt out light bulbs at the end of the tenancy.

The tenant's agent argued that rental unit was cleaned and the carpets were vacuumed and cleaned with a carpet cleaner at the end of the tenancy. The tenant submitted color photos of the rental unit taken at the end of the tenancy. Further, the tenant's agent argues that the tenants were not provided an opportunity to complete a condition inspection report on move-out as they were rushed out of the rental unit on the final day.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires 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.

I find the landlord's testimony and invoice for the professional carpet cleaning support the landlord's claim that the carpets were not left reasonably clean at the end of the tenancy. Even

though the tenants may have attempted to clean the carpets, I accept the landlord's testimony that the carpets were stained, covered in pet hair and odour. The landlord suffered a loss by having to get the carpets cleaned professionally. The invoice from the cleaning company also provides details with respect to the condition of the carpets, specifically pet stains and odor. The landlord is entitled to an award of **\$420.00** as per the carpet cleaning invoice.

The landlord's claim for the 4 hours of general cleaning is dismissed as I find the landlord did not provide sufficient evidence to support this claim. The condition of the rental unit is not determinable from the picture evidence provided by the landlord. The landlord did not provide original pictures and the copies submitted by fax are illegible. Further, the landlord did not complete a condition inspection report on move-out detailing the condition of the unit. I accept the tenant's argument and photo evidence that the remainder of the rental unit was left reasonably clean at the end of the tenancy.

I accept the landlord's testimony that the tenants did not replace the light bulbs at the end of the tenancy. The tenants did not dispute this portion of the landlord's claim. The landlord is entitled to an award of **\$18.47** as per the online estimate to replace the bulbs.

The landlord is entitled to a total monetary award of **\$438.47**.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

Paragraph 36(2)(c) of the Act states that unless a tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Paragraph 36(2)(c) does not preclude a landlord from making a claim for a monetary order for damage to the rental unit.

Although the landlord did make a claim against the security deposit within 15 days of being provided the forwarding address, the landlord's right to claim against the deposit for damages was extinguished as the landlord failed to complete a condition inspection report at the end of the tenancy. The tenant's security deposit was not refunded within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of **\$1700.00**, which is double the original security and pet deposit of \$850.00.

Offsetting the monetary award of \$438.47 in favor of the landlord, the tenant is entitled to a monetary order of **\$1261.53**.

As the landlord was for the most part not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application from the tenant.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of **\$1261.53**. Should the landlord fail to comply with this Order, this 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: November 15, 2016

Residential Tenancy Branch