



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 dealt with the landlords' Application for Dispute Resolution seeking a monetary order

The hearing was conducted via teleconference and was attended by one of the landlords and both tenants.

At the outset of the hearing the landlord noted that he intended to reduce his claim from \$1,885.00 to 1,839.35. In support of this change the landlord had submitted a new Monetary Order Worksheet outlining his total change. For clarity, we reviewed the landlord's Worksheet and I noted that the landlord was seeking recovery of the filing fee for a previous hearing. The landlord clarified that he wanted the filing fee decision of the previous hearing reversed.

I advised the landlord that I would not consider a claim for filing fees in this hearing as the issue is already decided in the previous decision. *Res judicata* is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgment on the merits has been made; and the involvement of the same parties. As a result, I amend the landlords' Application for Dispute Resolution to be reduced by an additional \$50.00 for a previous filing fee.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid strata fines; for repairs to the rental unit and for a lost access fob; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on August 25, 2015 for a month to month tenancy beginning on January 1, 2015 for a monthly rent of \$2,548.50 due on the 1st of each month with a security deposit of

\$1,200.00 paid. I note the tenancy agreement contained a 1 page addendum with 16 additional terms. The parties agreed the tenancy ended on June 30, 2016.

The tenants submitted that they provided the landlord with their forwarding address on July 4, 2016. I note the landlord submitted their Application for Dispute Resolution on July 15, 2016.

The landlords' original Monetary Order Worksheet indicated they were claiming \$700.00 for strata fines, however they submitted an updated Worksheet reducing their claim to \$500.00. The tenants agreed they owed the landlord for these fines.

The landlord sought compensation for the repairs to the walls made by screws and nails and to paint the unit as a result of the repairs required and a change in colour of the walls in the amount of \$813.75. The landlord also seeks compensation for the replacement of a blind in the amount of \$425.60.

In support of their claim for these costs the landlord has submitted photographs taken at the end of the tenancy; a Condition Inspection Report recording the condition of the rental unit at the end of the tenancy; and some invoices. The landlord has provided no evidence of the condition of the rental unit at the start of the tenancy.

The landlord submitted the tenants failed to return all access fobs at the end of the tenancy and seeks compensation in the amount of \$50.00. In support of this claim the landlord refers to the Condition Inspection Report that records, among other things, that 2 basic fobs and 1 remote for the secured parking were returned and a receipt confirming the tenants had received on May 28, 2014 3 basic fobs and one that would access the secured parking.

The tenants submit that when they moved into the rental unit in 2009 under a different tenancy agreement they received 3 fobs and when they asked for a 4th fob they were required to purchase the 4th. The tenants submit that as the 4th fob was purchased by them they were under no obligation to return it.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept, from the submissions of both parties, that the landlord is entitled to \$500.00 for strata fines.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy 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.

In order to establish that the tenants had failed to comply with their obligations under Section 37 the landlord must provide sufficient evidence to establish that any damage to the walls, including the change of colour of the walls, and to the blinds occurred during the tenancy. In the absence of any evidence such as a Condition Inspection Report or photographs confirming the condition of the start of the tenancy I find the landlord cannot establish when any of this damage occurred. Therefore, I find the landlord has failed to establish the tenants failed to return the rental unit undamaged except for reasonable wear and tear. I dismiss the portion of the landlord's claim for \$813.75 for repairs and \$425.60 for replacement blinds.

Section 37 also requires the tenants, when vacating the rental unit to return all the keys or other means of access that are in the possession or control of the tenant regardless of who purchased them. As such, I find the tenants were obligated to return the additionally purchased fob.

However, as the tenants argue that they had purchased an additional fob and the landlord has failed to provide evidence of the number of fobs given to the tenants at the start of the tenancy I find it reasonable that the tenants purchased an additional fob during the tenancy. While they were obligated to return it pursuant to Section 37 of the *Act*, I find that since it was an extra fob the landlord has suffered no loss as a result of the tenants' failure to return it.

As a result, I dismiss the portion of the landlords' claim for \$50.00 for a replacement fob.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

While the tenants submitted that they should be entitled to double the amount of the deposit because the landlord has held on to their deposit until now, I find the landlord was required to either return the deposit or file an Application for Dispute Resolution within 15 days of the end of the tenancy and receipt of the tenant's forwarding address.

As the tenancy ended on June 30, 2016 and the landlord received the tenants' forwarding address on July 4, 2016 I find the landlord had until July 19, 2016. As noted above the landlord filed their Application for Dispute Resolution on July 15, 2016. As a result, I find the landlord has complied with their obligations under Section 38(1) and the tenants are not entitled to double the amount of the deposit.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$500.00** comprised of the strata fines. As the landlord was unsuccessful in the bulk of their claim and the tenants had provided evidence to confirm they had advised the landlord they agreed with the strata fines, I find the landlord is not entitled to recovery of the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the above amount from the security deposit and interest held in the amount of \$1,200.00 in satisfaction of this claim. I grant a monetary order to the tenants in the amount of **\$700.00** for return of the balance of the security deposit. This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: January 25, 2017

Residential Tenancy Branch