



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF (Landlords' Application)
 MNDC, MNSD, FF (Tenants' Application)

Introduction

This hearing convened as a result of cross applications. In the Landlords' Application for Dispute Resolution the Landlords requested monetary compensation for damage to the rental unit, authority to retain the security deposit and to recover the filing fee. In the Tenants' application for Dispute Resolution they sought a monetary order for \$4,310.00 including return of double their security deposit and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on January 16, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The Landlord submitted five pages of evidence to the Branch on January 13, 2017. This evidence was not submitted in accordance with the *Residential Tenancy Branch Rules of Procedure* 2.5, 3.1(d), 3.13 and 3.14 which provides that an Applicant must file all evidence in support of their claim at the time of filing, as a single package, and in any case, no later than 14 days prior to the hearing date. Timely disclosure of evidence promotes settlement and gives the other party a fair opportunity to respond to the evidence. As the Landlord's evidence was submitted less than one business day prior to the hearing, I did not consider that evidence in making my Decision.

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, not all details of the parties' respective submissions and or arguments are reproduced here; further, 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. Are the Tenants entitled to monetary compensation from the Landlords?
3. What should happen with the Tenants' security deposit?
4. Should either party recover the filing fee?

Background and Evidence

M.G. testified on behalf of the Landlords (hereinafter referred to as the "Landlord"). She stated that the tenancy began in early June 2009. At the time, monthly rent was payable in the amount of \$1,350.00 and the Tenants paid a security deposit in the amount of \$675.00.

The Landlord confirmed that she did not perform a move in condition inspection report claiming it was not necessary as the rental unit was "brand new".

The Landlord further testified that the tenancy ended at the end of June 2016. The Landlord stated that she received the Tenants' forwarding address in writing "a few days after".

On the Application for Dispute Resolution the Landlords confirmed they sought compensation for the following:

Replacement of burned carpets	\$787.42
Broken bathroom light	\$99.82
Light replacement and washer pump unclogging	\$136.50
Kitchen sink cleaning and re-installation, carpet professional installation, cabinet door installation and caulking	\$388.50
Replacement of lost visitor pass	\$25.00
Re-order broken remote control FOB	\$75.00
Filing fee	\$100.00
TOTAL	\$1,612.24

The Landlord stated that the second bedroom carpet was burned and required replacement. Photos of the carpet submitted in evidence show two small holes in the carpet. The Landlord testified that the cost to replace the carpet was \$787.42.

The Landlord also claimed \$136.50 for the labour costs to replace the light in the bathroom as well as to clear the clothes washing machine pump which was clogged. The Landlord testified that it was her understanding that the Tenants washed their bathmat in the clothes washing machine and the non-skid underside came off and plugged the drain.

The Landlord also stated that the kitchen sink needed to be "cleaned" and reinstalled. She stated that the Tenants made repairs during the tenancy, without her knowledge and consent,

and those repairs were inadequate. The Landlord claimed the labour cost to reinstall and caulk the cabinet door.

The Landlord stated that when the Tenants moved in they gave the Tenants two visitor passes and the Tenants failed to return one when they moved out as the Tenants stated that they lost one; accordingly, the Landlords sought compensation for \$25.00 for the cost of getting a new pass.

The Landlord stated that she gave the Tenants two remote control FOBs when they moved in. She stated that one of the FOBs was broken and the cost to replace it was \$75.00.

Y.G. testified on behalf of the Tenants as follows. In response to the Landlords' claim regarding replacement of the carpet due to "burn marks", Y.G. stated that she did not burn the carpet, none of them smoke, and she had no idea how this would have occurred. Y.G. stated that upon moving in she noticed there were small marks in the carpet when she moved in. Y.G. also stated that the Landlords failed to bring this to their attention when they moved in.

Y.G. confirmed that they broke the bathroom light. She stated that they tried to find a similar light fixture but were unable to do so.

Y.G. stated that "once in a while" the plumbing pipes were cleared. She stated that she did not clean the washing machine filter. She confirmed that they did call the Landlords when the washing machine wasn't working.

Y.G. confirmed that during the tenancy she called the Landlords twice to talk to them about concerns she had about the kitchen sink and when the Landlord failed to attend to this repair, she had her father try to fix it.

Y.G. stated that they did not notice anything wrong with the cabinet when they moved out.

Y.G. confirmed they agreed to reimburse the Landlords the cost of the visitor pass.

Y.G. stated that the FOB was working perfectly fine when they moved out although there was a small chip. She confirmed she was opposed to paying any cost for its replacement as it worked.

Y.G. did not make any submissions regarding the balance of the funds requested.

Analysis

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

The Landlord seeks authority to retain the Tenants' security deposit against any amounts awarded. The Tenants seek return of double their security deposit.

Section 38 of the *Residential Tenancy Act* deals with security deposits and reads 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, 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 security deposit.

By failing to perform incoming or outgoing condition inspection reports the Landlords have extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the *Act*. As they had no right to claim against the deposit, their only option pursuant to section 38(1) of the *Act* was to return the funds. In failing to do so, the Landlords have breached section 38(1) of the *Act*.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. Therefore, I Order, pursuant to sections 38 and 67 of the *Act*, that Tenants are entitled to the sum of **\$1,350.00**, comprised of double the \$675.00 security deposit.

As noted, the Tenants did not make any submissions regarding the balance of the \$4,310.00 claimed on their Application for Dispute Resolution. I dismiss the balance of their monetary claim with leave to reapply.

I will now deal with the Landlords' monetary claim for damage to the rental unit.

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 section 37 of the *Act* as follows:

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 the case before me the Landlords failed to perform a move in or move out condition inspection report. In addition to satisfying the requirements of the *Act* and the *Regulations*, condition inspection reports are invaluable documents in terms of recording the condition of the rental at the time the inspections occur. Without such reports, the Landlords must provide other evidence to confirm the condition of the rental at the start of the tenancy.

The photos submitted by the Landlords show two small marks in the carpet. The Landlords claim the marks are burn holes and claim the cost to replace the carpet in its entirety. The Tenant testified that the marks existed at the time the tenancy began and that in any case, they do not smoke, nor do their friends. Without further evidence from the Landlords I am unable to conclude the carpet was damaged by the Tenants. I therefore dismiss their claim for related compensation.

The Tenant conceded that they broke the light and did not clean the washing machine drain filter. I therefore award the Landlords the **\$99.82** cost of the light, as well as the **\$136.50** labour costs for its replacement and clearing of the clothes washing machine drain.

The Tenants deny damaging the kitchen sink although they confirm they contacted the Landlords about issues with the sink on two occasions during the tenancy. They also admit that

when the Landlords failed to address their concerns, they attempted to repair the kitchen sink without success. Based on the evidence before me, I am unable to find that the Tenants damaged the kitchen sink. I find it more likely it was improperly installed. I therefore deny the Landlords compensation in this regard.

The Tenants deny the cabinet door was damaged at the end of the tenancy. Photos submitted by the Landlords confirm it was in fact damaged. There was no evidence before me that the Tenants brought this to the Landlords' attention during the tenancy. I therefore find it more likely the Tenants damaged the cabinet door during the tenancy.

The Landlords claimed the sum of \$388.50 for the cost to repair the sink, reinstall the carpet and install the cabinet door. There was no breakdown of hours provided. As I have denied the Landlords' claims relating to the carpet and the sink, I award them a nominal **\$100.00** for the cost to repair the cabinet.

The Tenants confirmed they are willing to pay the cost of replacing the visitors parking pass in the amount of **\$25.00**; I therefore award this sum to the Landlords.

The Landlords sought the sum of \$75.00 representing the cost to replace the broken remote control FOB. The Tenants admit damaging the FOB, but claimed it worked at the end of the tenancy. I accept the Landlords' evidence that the FOB was inoperable and required replacement. I therefore award them the **\$75.00** claimed.

As the parties have enjoyed divided success I Order that they each bear the cost of their filing fee.

I award the Landlords compensation in the amount of **\$436.32** for the following:

Broken bathroom light	\$99.82
Light replacement and washer pump unclogging	\$136.50
cabinet door installation and caulking (nominal amount awarded)	\$100.00
Replacement of lost visitor pass	\$25.00
Re-order broken remote control FOB	\$75.00
TOTAL	\$436.32

Conclusion

As I have awarded the Tenants the sum of **\$1,350.00** and the Landlords the sum of **\$436.32** these amounts are to be offset against the other such that the Tenants are granted a Monetary Order in the amount of **\$913.68**.

The Tenants are given a formal Monetary Order in this amount and must serve the Landlords with a copy of this Order as soon as possible. Should the Landlords 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: February 14, 2017

Residential Tenancy Branch