



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlords applied requesting a monetary order for damage to the unit; a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement; to keep all or part of a pet damage deposit or security deposit, and to recover the cost of the application fee.

The Tenant is requesting the Landlord comply with the Act; a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement; for the return of the pet damage deposit or security deposit; and to recover the cost of the application fee.

The Landlords were present at the hearing. The Tenant was not present, but had an agent attend on his behalf. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me.

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.

Preliminary and Procedural Matters

The Tenant's agent provided an enduring power of attorney document to prove that she has authority to act as the Tenant's agent.

The Tenant did not provide any documentary evidence in support of his application, or in response to the Landlord's application, and was not present at the hearing to provide

affirmed testimony. The Tenant's agent confirmed that the Tenant received the Landlord's documentary evidence.

Issues to be Decided

- Are the Landlords entitled to compensation due to damage or loss?
- Is the Tenant entitled to the return of the security deposit?
- Can the Landlord retain the security deposit in partial satisfaction of his claim?
- Are the parties entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on March 1, 2015. Rent in the amount of \$1,300.00 was due on the first day of each month. The Tenant paid a security deposit of \$650.00 to the Landlord.

The Tenant vacated the rental unit on May 18, 2016. The co-Tenant vacated the rental unit on May 25, 2016.

Tenant's Application

Security Deposit

The Tenant is seeking \$1,300.00 for the return of double the security deposit.

The Tenant's agent submitted that she left a message for the Landlord in late June and was informed that the Landlord received instructions from the Tenant to return the security deposit to his father.

The Tenants agent submitted that she received an inspection report but it is not signed or dated which is a violation of the Act.

The Landlord testified that he gave the Tenant permission to have a roommate. The Landlord testified that he did not have the roommate sign the tenancy agreement. The Landlord testified that the Tenant moved out on May 18, 2016, due to a job opportunity and the co-Tenant remained in the unit. The co-Tenant moved out of the rental unit on May 25, 2016. The Landlord submitted the neither the Tenant nor his mother was available to participate in the final move out inspection completed on May 25, 2016.

The Landlord testified that on June 28, 2016, he mailed a breakdown of the security deposit to the address provided by the Tenant's parents. The Landlord testified that there was no agreement with the Tenant that the Landlord could withhold any amount

from the security deposit. The Landlord submitted that he was not aware that the security deposit had to be returned within 15 days.

The Landlord submitted that the Tenant was not available to participate in the move out inspection, which was completed on May 25, 2016.

The Tenant's agent submitted that she was not present at the rental unit on the date her son moved out.

Landlord's Application

The Landlord is claiming \$793.30 for cleaning costs and damage to the rental unit. The Landlord is requesting a monetary order for the following items, and is asking to retain the security deposit and pet damage deposit in partial satisfaction of his claim.

Painting	\$200.00
Steam Vacuum	\$125.00
Cleaning Materials	\$83.30
Cleaning	\$200.00
Microwave damage	\$100.00
Move out fee	\$100.00

Painting

The Landlord is seeking \$200.00 for the cost of painting materials and labour to paint the walls in the Living room, kitchen and bedrooms. The Landlord testified that the suite was painted just prior to the Tenant moved in. The Landlord submitted photographs of the walls of the rental unit indicting there are wall marks, gouges, and work being done. The Landlord submitted that the photographs were taken after the co-Tenant moved out.

The Tenant's agent submitted that there are no dates on when the photographs were taken.

Steam Vacuum

The Landlord is seeking \$125.00 for the cost to steam clean the carpets. The Landlord provided a receipt for the cleaning.

In response, the Tenant's agent agreed to pay the cost of the carpet cleaning.

Cleaning

The Landlord is seeking \$200.00 for cleaning the rental unit. The Landlord testified that the Landlords performed the cleaning. The Landlord testified that the cleaning took 8 hours and they are charging \$25.00 per hour. The Landlord testified that cleaning included: bulbs; fixtures; blinds; kitchen; oven; fridge; sink; and floor.

The Landlord refers to the cleaning checklist completed at the end of the tenancy as evidence that the suite was left dirty. The Landlords provided photographs of the rental unit that they indicates shows a dirty baseboard; dirty blinds; ink stained wall and carpet; burned out bulb; dirty door; dirty bathtub; missing light bulbs; dirty stove top; dirty oven; dirty kitchen cabinets; unclean fridge; and unclean kitchen floor.

In response to the Landlord's testimony the Tenants agent submitted that there is no evidence of when the Landlords photographs were taken. The Tenants agent submitted that she was not present at the rental unit on the day her son moved out.

Cleaning Materials

The Landlord is seeking \$83.30 for the cost of materials used to clean the rental unit. The Landlords testified that they had to purchase a receptacle, light bulbs, scouring pads and other cleaning materials. The Landlord provided receipts for the purchase of the cleaning materials.

The Tenants agent did not specifically respond to the Landlords claim for cleaning materials other than stating that there is no evidence of damage to receptacles.

Microwave Damage

The Landlord is seeking \$100.00 in compensation for a missing microwave handle. The Landlord testified that the microwave was purchased new in 2009. The Landlord testified that the Tenant tried to glue it back on using glue and it is now ugly. The Landlord did not recall how much the microwave cost and has not replaced the handle.

The Tenant's agent submitted that she is not aware of when the damage occurred and cannot comment.

Move Out Fee

The Landlord is seeking to recover \$100.00 charged by the strata corporation for the Tenants move out charge. The Landlord provided documentary evidence that the

Tenant signed form K; a Notice of Tenant's Responsibilities on Feb 27, 2015. Form K states that Tenant must comply with the bylaws and rules of the strata corporation. The Landlord also provided a copy of the strata move in/ move out rules. The rules indicate a resident must pay a fee of \$100.00 at move in and move out.

Analysis

The Landlord refers to the Tenant's roommate as a sublet Tenant. A sublet tenancy would require the original Tenant to vacate the rental unit. I find that even though the Landlord did not have the person sign the tenancy agreement, the Landlord gave permission for the person to live in the rental unit as a co-Tenant.

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

Tenant's Claim

The Tenant is seeking the return of the security deposit.

Section 20 of the *Residential Tenancy Regulation* requires that a condition inspection report must contain specific information; including names, addresses, and dates.

Section 18 of the Regulation requires the Landlord to give a copy of a condition inspection report to a Tenant within 15 days.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

The Guideline also states that the right of a Landlord to obtain the Tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required; and/or*

- *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*

I find that the “cleaning checklist” provided by the Landlord does not meet with the requirements under section 20 of the Regulations. The cleaning checklist does not contain full legal names, the address, the date, and an appropriate space for the Tenant to agree or disagree. The Landlord also failed to provide the Tenant with a copy of a condition inspection report within 15 days of the date the final inspection was completed.

The tenancy ended on May 25, 2016, when the co Tenant moved out. The Landlord had the Tenant’s forwarding address and mailed a breakdown of the security deposit to the Tenants forwarding address after June 28, 2016. The Landlord applied for dispute resolution on August 12, 2016.

I find that the Landlord’s right to claim against the security deposit is extinguished due to non-compliance with the requirements regarding information that must be contained in a condition inspection report. I also find that the Landlords failed to repay the security deposit to the Tenant, or make an application for dispute resolution against the security deposit, within 15 days of the date the tenancy ended. I find that there was no written agreement that the Landlord could retain all or part of the security deposit.

Pursuant to section 38 (6) of the Act, the Landlords must pay the Tenant double the amount of the security deposit. I award the Tenant \$1,300.00 which is double the amount of the security deposit.

Landlord's Claims

While the Landlord lost the right to claim against the security deposit for damage, the Landlord retains the right to file a claim for damages arising out of the tenancy, including damage to the rental unit.

Painting

I find that the Landlord has provided the stronger evidence that the rental unit required painting due to damage from the Tenant. The Landlord provided affirmed testimony and provided photographic evidence to support the claim. The Tenant was not present at the hearing and the Tenant’s agent was not in the rental unit at the time the tenant moved out.

I grant the Landlord the amount of \$200.00 for painting and materials.

Steam Vacuum

The Tenant's agent agreed to pay for the steam cleaning of the carpets. I award the Landlord the cost of the carpet cleaner rental in the amount of \$125.00.

Cleaning

I find that the Landlord has provided the stronger evidence that the rental unit was left unclean. The Landlord provided affirmed testimony that the unit was left dirty and also provided photographs to support their claim. The Tenant was not present at the hearing to respond and the Tenant's agent was not present in the unit at the end of the tenancy.

I award the Landlord their claim for \$200.00 for cleaning of the rental unit.

Cleaning Materials

I have found that the Landlords are entitled to compensation for cleaning the rental unit, and I find that they are also entitled to the amount of \$76.19 for the cost of the cleaning materials and light bulbs that they purchased. I reduced the Landlord's claim by \$7.11 because there was insufficient evidence that the receptacles were damaged and needed to be replaced.

Microwave Damage

The Residential Tenancy Policy Guideline #1 Responsibility for Residential Premises provides clarification of the responsibilities of the Landlord and Tenant regarding maintenance, cleaning, and repairs of residential property. The Guideline states that the Landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the Tenant.

The microwave was approximately 7 years old. There is insufficient evidence from the Landlord that the Tenant deliberately damaged or neglected the microwave. The Landlord's claim for \$100.00 is dismissed.

Move Out Fee

The Tenant agreed to follow the rules of the strata corporation. The strata corporation charges a fee for moving out. I find that the Tenant is responsible to repay the \$100.00 fee to the Landlord.

Set Off of Claims

The Tenant is awarded \$1,300.00 for the return of double the security deposit.

The Landlords are awarded a total amount of \$701.19

After setting off the amounts of the awards, I grant the Tenant a monetary order in the amount of \$598.81. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord and Tenants had success in their applications, I decline to order either party to pay the other for the cost of the filing fee for this hearing.

Conclusion

After setting off the amounts owed by each party, I grant the Tenants a monetary order in the amount of \$598.81. This order must be served on the Landlords and may be enforced in Provincial 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 07, 2017

Residential Tenancy Branch