



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF, O

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord. Both files were heard together.

The landlord's application is a request for a monetary order for \$652.60 for alleged damages. The landlord is also requesting an order to retain a portion of the security/pet deposit towards this claim.

The tenant's application is a request for a monetary order for \$3032.42 for alleged damages and the return of the security/pet deposit double. The tenants are also requesting an order for recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, digital evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the landlord or the tenants has established a monetary claim against the other, and if so in what amount.

Background and Evidence

The parties agree that the tenants paid a security deposit of \$450.00, and a pet deposit of \$400.00, on July 31, 2015.

Parties also agree that the tenancy began on September 1, 2015 with a monthly rent of \$900.00 due on the first of each month.

The parties also agree that the tenants vacated the rental unit on January 31, 2016, and that no rent was outstanding at that time.

The landlord testified that, at the beginning of the tenancy, the rental unit had been completely renovated, including the replacing of all windows, and it was in very good shape.

The landlord further testified that when the tenants moved into the rental unit there were absolutely no signs of mold or any water leaks into the rental unit.

The landlord further testified that at the end of the tenancy there was an extensive amount of mold in the rental unit and a high moisture content in the carpets and as a result he had to pay for a dehumidifier to get rid of the high moisture content, and had to pay the contractor to repair the damage caused by the mold.

The landlord further testified that he re-rented the unit on February 15, 2016, to new tenants, and, even though there were no changes made to the rental unit, the new tenants did not have any issues with mold right up to the time that he sold the unit in August of 2016.

The landlord further testified that he believes the condensation was caused by the tenant's negligence, perhaps from terrarium/aquariums they had in the rental unit, and therefore he believes the tenant should be paying for the cost of repairing the damage that was found at the end of the tenancy.

The landlord is therefore requesting a monetary order as follows:

Rental of dehumidifier	\$145.60
Repair costs	\$507.00
Total	\$652.60

The tenants testified that the landlord did not produce a move-in inspection report at the beginning of the tenancy however they further testified that the rental unit did look to be in good condition when they moved into it, but, shortly after moving in, they started to have problems with everything in the bedroom getting moldy.

The tenants further testified that they reported the problem to the landlord and the landlord sent over a contractor to try and find out what was causing the issue.

The tenants further testified that the contractor stated he believed the window was causing the issue and that the window needed to be replaced.

The tenants further testified that the contractor drilled some holes in the bottom of the window to drain out the moisture, which improved the moisture issue somewhat, however the window was never replaced and the moisture issue was never completely resolved.

The tenants further testified that the moisture was not from the terrarium which was for a snake, as they did not have anything in it during the tenancy, and they believe the landlord should be held liable for the damages caused by the mold.

The tenants further testified that after they vacated the rental unit, and while the Fortis BC Bill was still in their name, the landlord kept turning up the heat, and therefore they are requesting that he pay a portion of their heating bill.

The tenants further testified that they believe the landlord should be returning their full security deposit double as they do not believe they caused any damage to the rental unit and the landlord did not return the deposit within the 15 day time limit.

The tenants are therefore requesting a monetary order as follows:

Cost to replace mattress and box spring	\$1051.68
Return of security/pet deposit	\$900.00
Penalty for not returning deposits within 15 days	\$900.00
Extra Fortis utilities	\$8.41
Cleaning supplies	\$92.16
Cost of photo evidence	\$35.17
Gas and parking to file claim at RTB	\$45.00
Filing fee	\$100.00
Total	\$3132.42

In response to the tenant's testimony the landlord testified that he dealt with all requests from the tenant regarding the moisture issue, however there was no moisture found in the walls and he still believes the moisture was caused by the tenants.

The landlord further testified that he believes he would have produced a move-in inspection report at the beginning of the tenancy, and a copy would have been given to the tenants; however he agrees that he has not provided a copy of that report for this arbitration.

Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case it is my finding that neither the landlord nor the tenant has met the burden of proving what caused the moisture issue in the rental unit.

The landlord has argued that the moisture issue must have been caused by the tenants since there have been no issues prior to the tenancy or since the tenants vacated, however the landlord has provided no evidence to show that the moisture was the result of any negligent actions on the part of the tenants. The landlord has alleged that the moisture was from terrarium is used by the tenants; however there is insufficient evidence to support that allegation.

Further, the tenants have argued that the moisture issue, that caused the mold, was the result of an issue with the rental unit itself, however again they have provided insufficient evidence to meet the burden of proving that claim.

It is my decision therefore that I will not allow any of the landlords claim as the full claim relates to the moisture issue, nor will I allow any of the tenants claim for damages that resulted from the moisture issue in the rental unit.

Further, I also deny the tenants claim for the Fortis utility costs as the tenants have provided no evidence to show how they arrived at the cost claimed.

I also deny the tenants claim for gas and parking as these are costs of the dispute resolution process, and I do not have the authority to award costs other than the filing fee.

It is my finding however that the tenants have established a claim for the return of double their security deposit and pet deposit.

Section 24(2) of the Residential Tenancy Act states:

24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case, although the landlord claims a move-in inspection report would have been done, he has provided no evidence to show that that report was done, and the tenants testified that no move-in inspection report was ever done or received by them.

Therefore since the landlord has not met the burden of proving that he ever completed a move-in inspection report, the landlord did not have the right to claim against the security deposit for damages and the landlord was required to return the deposit within 15 days of receiving a forwarding address in writing.

Further section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

Although the landlord did apply for dispute resolution within 15 days, since he did not have the right to file such a claim, he is still required to pay double the amount of the security/pet deposits.

The tenants paid a combined security/pet deposit of \$900.00, and therefore the landlord must pay \$1800.00 to the tenants.

Having allowed a large portion of the tenant's claim, I also allow their request for recovery of their \$100.00 filing fee.

Conclusion

The landlord's application has been dismissed in full without leave to reapply.

I have allowed \$1900.00 of the tenant's claims and of issued a monetary order in that amount. The remainder of the tenant's claims have been dismissed without leave to reapply.

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 20, 2017

Residential Tenancy Branch