



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, OPL, ON, FF

Introduction

This was a hearing with respect to the landlords' application for a monetary award and an order to retain the security deposit. The hearing was conducted by conference call. The landlords and the named tenants called in and participated in the hearing. The parties exchanged documents and digital evidence prior to the hearing. Although the landlord included a request for an order of possession in the application, the tenancy ended in December and an order of possession is not required.

Issue(s) to be Decided

Are the landlords entitled to a monetary award and if so, in what amount?
Are the landlords entitled to retain all or part of the security deposit?

Background and Evidence

The rental unit is a house in Surrey. The tenancy began on May 1, 2012. The monthly rent was \$1,650.00 and the tenant paid a security deposit of \$825.00 at the start of the tenancy. There were several tenancy agreements signed between the parties. The tenant, A.G. was a signatory to each of the agreements. The tenant E.J. signed the last agreement dated May 9, 2015.

In the application for dispute resolution the landlord claimed the sum of \$825.00, being the amount of the security deposit held by the landlords.

The landlords claimed submitted digital evidence consisting of photographs of the rental unit. The landlord said the pictures showed that the tenants caused significant damage to the rental unit and did not clean the rental unit properly at the end of the tenancy. The landlord testified that there was paint damage caused by permanent markers used to write on the walls. The landlord said the tenant's daughter wrote graffiti on the wall with a marker. There were locations where paint was applied over permanent marker

and the marks showed through. The landlord said special paint would be needed to cover the marks. The landlord testified that the front living room window was broken and replaced during the tenancy and it was broken again shortly before the tenancy ended. The landlord provided a monetary order worksheet and set out the following claims:

• Walmart:	replacement faucet:	\$78.38
• Walmart:	door handles, faucets, switch plates	\$218.58
• Home Depot:	paint, towel bar shelves, hardware	\$186.00
• Budget appliance:	oven door roller kit, light bulb:	\$78.23
• Glass shop:	Sealed window unit:	\$440.52
Total:		\$1,001.71

The landlords said that they have incurred other costs for cleaning and repairs that have not been included because the landlords have chosen to limit their claim to the amount of the security deposit that they hold.

The tenant said there was no condition inspection when the tenancy began, but there was a list of damages noted at the time of move-in that was attached to the tenancy agreement. The tenant testified that the window broke during the tenancy, but it was due to a defect or problem with the installation or the structure of the house. The window has now been replaced for the second time during the tenancy. The tenants said that there was a crack in the drywall below the window and she suggested that the window broke due to a structural problem with the house and perhaps due to vibration caused by City crews installing a sewer line outside the house.

The tenant said that when the landlord inspected the house he completed an inspection report and he said that the house was cleaner than it was when the tenant moved in; he also said not to worry about certain minor defects because the house was going to be renovated. The tenant said that there was an ongoing problem with moisture and mould in the rental unit, but this was not damage for which the tenants were responsible; it was a problem caused by leaks and problems with the heating and ventilation systems in the house. According to the inspection report the front window was to be inspected by a glass company to determine the cause of breakage. The landlord produced an invoice from the company that replaced the window. It was noted on the invoice dated January 25, 2017 that the window was broken on the inside pane of glass and the author said the damage was caused by something striking the inside pane of glass.

Analysis

The landlord did not prepare a condition inspection report at the beginning of the tenancy. An inspection was conducted at the end of the tenancy, but the landlords did not submit a copy as part of their documentary evidence. The tenant supplied a copy. The inspection report contained comments about each room of the house and contained the notations: "inspected All Pass" with the initials, presumably of the landlord. The only damage noted was the damage to the front window. The tenant said in the report that she did not agree that she was responsible for the window damage. She added the comment: "Until I see a professional report on whether or not the window is faulty".

Since they conducted the condition inspection, the landlords have identified a number of deficiencies, damage and lack of cleaning that they say justify them in retaining the security deposit. Their later evidence contradicts the explicit notations made on the inspection report. The Residential Tenancy Regulation provides by section 21 that:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The landlord prepared the condition inspection report and seeks now to contradict it with new conflicting evidence. Based on the contents of the condition inspection report signed by the landlord I find that the landlord has not proven, on a balance of probabilities that the tenants have caused damage or that they are responsible for repairs or cleaning to the rental unit apart from the claim for a broken window. The landlord has provided documentary evidence that the window was likely broken by an impact against the window from inside the rental unit during the tenancy, rather than an inherent defect or outside force: I find that the tenants are responsible for the cost to replace the window in the amount of \$440.52. Based on the condition inspection report prepared by the landlord and the testimony of the tenants, I find that the landlord has not proved on a balance of probabilities that the tenants are responsible for any other amounts claimed by the landlord for materials or repairs and the remainder of the landlords' claim is dismissed without leave to reapply.

Because success was divided and because the tenant was waiting for a report as to causation of the broken window I decline to award recovery of the filing fee for the landlords' application.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlords requested the retention of the security deposit in satisfaction of their monetary claim. Because the claim has been allowed in part and the remainder dismissed without leave to reapply, it is appropriate that I order the return of the balance of the tenant's security deposit. The landlords have been awarded the sum of \$440.52; I order that they retain the said sum from the \$825.00 security deposit that they hold and I grant the tenants a monetary order in the amount of \$384.48, being the balance of their deposit after deduction of the award in favour of the landlords. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlords' claim has been allowed in part; all other claims are dismissed without leave to reapply. The tenants have been granted a monetary order for the balance of the security deposit.

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: March 07, 2017

Residential Tenancy Branch

