



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$1950 for double the security deposit.
- b. An order to recover the cost of the filing fee.

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$1500 for damages
- b. An order to keep the security deposit
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Policy Guideline provides that a party cannot avoid service by refusing to pick up their registered mail. I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenants was served on the landlord by mailing, by registered mail to where he resides on January 27, 2017 and that it was sufficiently served even though the landlord failed to pick the package. I find that the Application for Dispute Resolution filed by the landlord was served on the landlord by mailing, by registered mail to where the tenants reside on February 2, 2017. The Application of the landlord includes a claim to keep the security deposit. The Policy Guideline provide that an arbitrator can consider the return of the security deposit even if the tenants had not filed an Application for Dispute Resolution or failed to properly serve it. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

- c. Whether the landlord is entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to retain the security deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on July 1, 2015 and continue on a month to month basis. The rent was \$975 per month payable in advance on first day of each month. The tenant(s) paid a security deposit and pet damage deposit totaling \$975 on June 22, 2015.

The tenancy ended on December 31, 2016. .

The tenant(s) provided the landlord with his/her their forwarding address in writing on November 25, 2016 and again on December 31, 2016.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit and pet damage deposit totaling \$975 on June 22, 2015. I determined the tenancy ended on December 31, 2016. I further determined the tenants provided the landlord with their forwarding address in writing on November 25, 2016 and December 31, 2016. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The landlord gave the tenants a cheque in the sum of \$419.05 at the end of January but subsequently put a stop payment on that cheque. The landlord did not ensure a Condition Inspection took place at the beginning and the end of the tenancy. As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$1950 ($\$975 \times 2 = \1950).

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1950 plus the sum of \$100 in respect of the filing fee for a total of \$2050..

Landlord's Claim:

The landlord claimed the sum of \$1500 for the cost of fixing damage to the bathroom floor. The rental unit was renovated 5 years ago. The landlord's claim includes the following claim for materials

• Cost of plumbing parts for vanity and toilet	\$72.63
• Cost of Flooring Materials	\$44.02
• Cost of Paint for baseboard	\$22.76
• Cost of floor filler	\$ 7.82
• Cost of Wood for floor and baseboard	\$24.86
• Cost of Pressure treated studs and plywood	\$116.48
• Cost of vinyl flooring	\$51.82
• Cost of floor underlay	\$58.37
• Additional flooring materials	<u>\$82.81</u>
Total	\$482.57

The Application for Dispute Resolution and Monetary order worksheet claims \$901.60 for the cost of labour. However, at the hearing the landlord stated he was not claiming labour as the tenants were good tenants.

The tenants dispute this claim stating the bathroom was uneven and heavily damaged when they took possession.

After carefully considering all of the evidence I determined the tenants have caused some but not all of the damage to the bathroom floor. However, in determining the appropriate compensation an arbitrator has to considering depreciation which has occurred over the previous 5 years as the landlord failed to prove that all of the water damage was caused by the tenants. I determined the landlord is entitled to half of the claim for supplies or materials or the sum of \$241. I determined the amount claimed for labour was excessive and not supported by the evidence. I determine that a fair cost for the labour is \$500. This sum should be reduced by one half to \$250 to reflect the depreciated value as not all of the damage was caused by the tenants.

At the hearing the landlord stated he was not claiming labour. However, his Application for Dispute Resolution made that claim. There appeared to be confusion. I determined it was appropriate to award the landlord credit for labour. The landlord has the right to pay the tenants the sum he has been credited for labour should he wish to do so.

In summary I determined the landlord has established a claim against the tenants in the sum of \$491 for materials and labour for fixing the bathroom floor. I further determined the landlord is entitled to \$87.81 for the tenants' share of the hydro bill. The tenants did not dispute this claim during the hearing. As a result I determined the landlord has established a claim against the tenants in the sum of \$578.81 plus \$100 for the cost of the filing fee for a total of \$678.81.

Conclusion:

The tenants have established a claim against the landlord in the sum of \$2050. The landlord has established a claim against the Tenants in the sum of \$678.81. After setting off one claim against that of the other I ordered that the landlord pay to the Tenants the sum of \$1371.19.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent 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 final and binding on both parties.

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 09, 2017

Residential Tenancy Branch