



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

LW ('landlord') appeared as agent for the landlord, and was given full authority to testify on behalf of the landlord for this hearing. DC ('tenants') appeared on behalf of both tenants for this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with copies of the tenants' application. Both parties confirmed receipt of each other's evidence.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

Are the tenants entitled to monetary compensation for damages or losses pursuant to section 67 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenants testified that this tenancy started in May of 2015. Monthly rent was set at \$1,050.00, payable on the first of each month. The landlord had collected a security deposit in the amount of \$525.00 and a pet damage deposit in the amount of \$300.00 at the beginning of the tenancy. The tenants moved out on August 31, 2016, and the landlord issued a refund cheque to the tenants after making the following deductions: \$260.00 for a cleaning turnover fee, \$30.00 for fluorescent lights, and a \$25.00 late rent payment fee.

The tenants provided a forwarding address to the landlord with their move out notice. The tenants testified that the landlord had changed in October 2016 after the apartments were sold to the current landlord. The tenants are requesting a refund of the above deductions as well as compensation for the landlord's failure to comply with the *Act*. The tenants are also applying for the reimbursement of the filing fee for this application.

The tenants provided the following reasons for their dispute. They testified that they had attempted to pay the August rent on August 1, 2016 to the manager, but was unable to reach anyone due to the date being a holiday. The tenants testified that they had paid the next day, and incurred the \$25.00 late fee as a result. They testified that they did attempt to pay on the day that rent was due, but were unable to.

The tenants do not dispute that they had broken the fluorescent lightbulbs, but testified that it was an accident and that they had notified the manager to have the lightbulbs replaced.

The tenants dispute the cleaning turnover fee charged to them, as the move-out inspection was done in the presence of a co-tenant who had signed the form "in a rush to get back to work", and did so "without reading the slip of paper". The tenants testified that the apartment was left in clean condition, with no damages. The tenants testified that they were never given copies of the inspection report until it was requested by SC, the grandmother of one of the tenants. They testified that they had never agreed to the \$260.00 cleaning turnover fee, and that the landlord had made changes to the report after the inspection.

SC testified in this hearing that she had attended the apartment on the day of the move out, and had taken pictures. She testified that "three cleaning ladies were standing around" when she had attended the apartment. The photos were included in the tenants' evidence package. She testified that she had to contact the landlord to obtain a copy of report, which was sent to her by email. She testified that she was not present

when the report was completed or signed, but that she was there to witness that the apartment was in clean condition.

The landlord's agent testified that a different agent was in attendance for the move-out inspection, but that the policy was to go over the move-out inspection with the tenants before signing. The agent testified that the tenant who was present during the inspection did sign off on the inspection report, which was submitted in the landlord's and tenants' evidence packages for this hearing. The agent testified that SC was not present for the inspection, or prior to it, and was only there after the landlord's cleaners were on site.

The landlord also included in their written evidence a letter dated July 29, 2016 confirming the tenants' notice to terminate the lease agreement, and specific instructions for the move out, including a check list for cleaning and a "move out charge price list". The landlord's agent testified that it is their policy to include the checklist and charge list to tenants. The agent testified that tenants had the option of replacing their own lightbulbs, or have the lightbulbs replaced by the landlord as per the charge list given to tenants. Light bulbs are listed as \$10.00 each, and the tenants were charged \$30.00 for the three that needed to be replaced.

The landlord testified that they are open on all statutory holidays that fall on the first of the month in order for tenants to make their rent payments on time. The landlord testified that the tenants were able to make their rent payment at their office as it was open on August 1, 2016.

The landlord's agent could not testify to the exact details of the report as a different agent was present for the inspection. The agent emphasized that it was the landlord's policy to provide a copy of the report to the tenants, and that a copy should have been given to the tenant in attendance. The landlord testified that a refund cheque was issued to the tenants in accordance with the *Act*, and the tenants should not be entitled to compensation.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's testimony that the tenants had ample opportunity to pay the rent on time. The tenants, in the hearing, did not dispute that they had paid the rent late, and as a result incurred a \$25.00 late fee. Section 26 of the *Act* requires the tenant to pay rent when it is due. Accordingly I dismiss this portion of the tenants' application.

The tenants, in this hearing, did not dispute the fact that they had broken the fluorescent light bulbs, and did not replace them during this tenancy. I accept the landlord's testimony and evidence that the expectation was clear to the tenants that they were expected to replace the lightbulbs, or would be charged to have them changed by the landlord according to the prices provided on the checklist. The tenants did not dispute the fact that this was made clear to them, and accordingly I dismiss this portion of the tenants' application.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenants' forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenants' security deposit plus applicable interest and must pay the tenants an additional amount equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants."

In this case, I find that the landlord did return a portion of the tenants' security deposit. The tenants and their witness testified that the apartment was left in clean and satisfactory condition. I note that neither party was present, though, for the move-out inspection, and that both the tenants and the landlord provided a copy of the report in their evidence. I also note that the tenants did not dispute that the tenant in attendance that day did sign the move out inspection report, which states that "the report fairly represents the condition of the premises". The report also indicates total charges of \$260.00 and \$30.00 to be deducted from the tenants' security deposit. The tenants' witness was not in attendance when this report was completed, or signed. I find that by signing this report, the tenant in attendance had agreed to these deductions, and that the landlord had complied with 38(4)(a) of the *Act*. On this basis, I find that the tenants are not entitled to a monetary order amounting to double the original security deposit, and I dismiss this portion of the tenants' application.

As the filing fee is normally awarded to the successful party at a hearing, the tenants' application for the recovery of the filing fee is dismissed.

Conclusion

The tenants' entire application is dismissed.

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: April 12, 2017

Residential Tenancy Branch