



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNDC MNR MNSD FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the Act"). The landlords applied for: a monetary order for damage to the unit pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

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; an amount equal to their security deposit based on the landlords' failure to return the security deposit in accordance with section 38 of the Act; and authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties (2 tenants and 2 landlords) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord LL ("the landlord") provided submissions on behalf of the landlords. The tenant LK ("the tenant") provided submissions on behalf of both tenants. Both tenants confirmed receipt of the landlord's Application for Dispute Resolution ("ADR") after its registered individual mailings to each tenant by the landlord on October 21, 2016. The tenants also confirmed receipt of supplementary evidence packages submitted by the landlord. The landlord confirmed receipt of the tenant's ADR as well as their evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit? Are the landlords entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee from the tenants?

Are the tenants entitled to the return of all or a portion of their security deposit?

Are the tenants entitled to an amount equal to their security deposit based on the landlords' failure to return the security deposit in compliance with the Act?

Are the tenants entitled to authorization to recover the filing fee from the landlords?

Background and Evidence:

This tenancy began on September 1, 2016 for a fixed term of one year with a rental amount of \$1350.00. A copy of the residential tenancy agreement was submitted as evidence for this hearing. The landlords continue to hold the tenants' \$675.00 security deposit and \$325.00 pet damage deposit. The tenants vacated the rental unit on September 30, 2016 providing their forwarding address in writing on that date (September 30, 2016).

Both the landlords and the tenants agreed that the tenancy agreement was signed on by both tenants and the landlord LL. Both the landlords and the tenants agreed that the condition inspection report was signed by all parties on September 1, 2017 and September 30, 2017 – the start and end of this tenancy. Both the landlords and the tenants agreed that the condition inspection report was modified on September 5, 2017 to acknowledge extra clean-up work and painting done by the landlords at the request of the tenants.

The move-in condition inspection report indicated that the rental unit was in good condition with the exception of some painting needed and some further cleaning required. The move-out condition inspection report indicated the unit was mostly clean with some painting needed and some minor damage identified.

The landlord testified that, after the end of the tenancy and the completion of the condition inspection report, he discovered a broken window. He submitted a quote, a letter and an invoice to show that he repaired a broken window on December 14, 2016. He testified that circumstances beyond his control, including a personal event and weather did not allow him to do this repair work earlier. The landlord testified that he believed the tenants hid the damage during the condition inspection at the end of the tenancy.

The landlord referred to the part of the tenancy agreement relating to the carpet cleaning. It stated that, if the landlord professionally cleaned the carpets at the start of the tenancy, the tenant would be responsible to pay for professional cleaning at the end of the tenancy. The landlord and tenant agreed that, because of this provision, the tenant was required to pay the cost of carpet cleaning.

The landlord testified that he was unable to rent the unit at the same rental amount that the tenants had agreed to. He testified that the tenants vacated the rental unit 11 months prior to the scheduled end of the fixed term tenancy and that therefore, he is entitled to be compensated in that amount. He submitted a copy of the subsequent tenancy agreement indicating that the tenancy began in October 2016 with a monthly rental amount for the rental unit of \$1300.00. He submitted ads and testified to his efforts to re-rent. The tenant disputed that the landlord had to reduce the rental amount. The tenant testified that she believed he could have rented the unit for the same amount of rent that she had agreed to.

The tenants submitted that the landlord should pay for their time cleaning the rental unit. The tenants testified that they cleaned the rental unit themselves while both landlords testified that they cleaned and paid for painting to the rental unit at the request of the tenant prior to the notation on the condition inspection report September 5, 2016.

The tenant testified that she and the co-tenant had to vacate the rental unit because of the smell of smoke. She provided a doctor's note that being in an environment where there is smoke, second hand smoke, other toxins or toxic smells would have a negative impact on her health. The landlord submitted that the tenant was aware of the condition of the rental unit at move in and saw neighbours smoking outside when viewing the rental unit. Further, he stated, showing photographs of signs on the property and the provision in his rental unit that there is no smoking within the residence.

The tenants submitted that the landlord should pay for their moving costs. The tenants submitted an estimate from a moving company in the amount of \$90.72 and a receipt for packing tape costing \$2.81. The tenants testified that these costs were endured as a result of the landlords' failure to provide them with a suitable rental unit.

The tenants sought the return of their security deposit and pet damage deposit.

Analysis

Section 21 of the Residential Tenancy Regulations states that, in most cases, a condition inspection report is the best evidence of the condition of a rental unit,

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 landlords and tenants have both submitted thorough condition inspection reports for the start and end of tenancy. Both parties agree that the information within the reports reflects the condition of the rental unit.

The landlord testified that a window was broken in the rental unit as a result of this tenancy. The landlord submitted a quote with a note and an invoice dated ...showing that he paid for the window to be repaired. The tenants vacated the rental unit on September 30, 2016. I accept the testimony of the tenants that neither were aware of damage to the window. I find that the 3 month timeline for this repair combined with the lack of mention of the window in the condition inspection report leaves doubt as to whether the tenants are responsible for this damage. Despite the landlord's detailed testimony as to the reason for the delay in the repair of the window, I find that the landlord has not met his burden of proof (on a balance of probabilities)

that the tenants are responsible for the cost of the window repair. **I dismiss the landlord's application to recover the cost of the window repair.**

The residential tenancy agreement includes a provision that, at move-out, the tenants are responsible for the carpet cleaning if the carpets were cleaned professionally at the outset of the tenancy. The tenants did not dispute that they should be responsible for the carpet cleaning as asserted by the landlord despite the short term of their tenancy. Based on the tenant's candid admission and the clear provision in the agreement for this tenancy, **I find that the landlord is entitled to recover \$126.00 for carpet cleaning at the end of this tenancy.**

To be successful with a claim for compensation, you must supply evidence such as photos, witness statements, receipts, or other evidence (including a copy of the condition inspection report(s)). The landlord provided condition inspection reports to support his testimony regarding the state of the rental unit. I accept the evidence as provided on the condition inspection report. I accept the landlord's testimony that he re-rented the unit for \$50.00 less per month than the tenants had agreed to pay as monthly rent. As the landlord's rental income went from \$1350.00 to \$1300.00 as a result of the tenants' early end of their fixed term tenancy, the landlord submits that he is entitled to recover the \$50.00 loss for the remainder of the lease.

Residential Tenancy Dispute Resolution Policy Guideline No. 30 provides guidance with respect to fixed term tenancies. Both parties agree that this tenancy was signed by the landlord and both tenants to establish a one year fixed term tenancy. Policy Guideline No. 30 defines a fixed term as a tenancy where both parties have agreed to a specified start and end date. The fixed term tenancy has a "predetermined expiry date".

During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties...

A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

In this form of tenancy, a term is fixed for the assurance of both parties. With few exceptions, this tenancy will continue to the end of its term, allowing the tenant and landlord the security that comes with this fixed period of time.

Residential Tenancy Policy Guideline No. 1, in describing the rights and responsibilities of both parties, provides that the Landlord is responsible for ensuring that his rental unit meets "health, safety and housing standards" established by law, and that the rental unit is reasonably suitable for occupation. The condition inspection report, as the best evidence of the condition of the rental unit, indicated that the unit indicated a reasonable condition at the outset of this tenancy.

It also reveals, with the addendum note dated September 5, 2016 that the landlords had taken further steps to satisfy the tenants by washing and painting.

Based on all of the testimonial and documentary evidence provided for this hearing, I find that the rental unit was in a condition that complies with both the letter and spirit of the *Residential Tenancy Act*. In this case, I find that the tenant has not provided sufficient evidence to support her claim that the landlord breached a material term of the tenancy. Therefore, the tenants did not comply with the Act or their residential tenancy agreement in ending the fixed term tenancy one month after its start.

Residential Tenancy Policy Guideline No. 5 and the Act require that a claimant to mitigate (or minimize) their loss. With respect to the landlord's claim to recover \$50.00 for 11 months, I accept his testimony and evidence that he was unable to re-rent the unit in a reasonable amount of time for the rental amount of \$1350.00. I do not accept the suggestion of the tenant that the landlord rented for a lower amount intentionally. I have reviewed the evidence submitted by the landlord with respect to his efforts to re-rent the unit and find that he made substantial efforts. Therefore, **I find that the landlord is entitled to recover \$50.00 for the 11 months remaining in the fixed term tenancy when the tenants vacated the rental unit, a total amount of \$550.00.**

Section 38 of the Act addresses the requirements with respect to the retention and return of a security deposit under the Act. 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 tenant's forwarding address in writing, to either return the security and pet damage deposit in full 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 deposits, and the landlord must return the tenant's security and pet damage deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security and pet damage deposit (section 38(6) of the *Act*).

With respect to the return of the security and pet damage deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlords were informed of the forwarding address in writing on September 30, 2016. The landlord had 15 days after September 30, 2016 to take one of the actions outlined above. The landlord applied to retain the tenants' security deposit and pet damage deposit on October 13, 2016. Based on the evidence before me, I find that the landlord applied for dispute resolution in accordance with the Act. He has held the tenants' security and pet damage deposit while awaiting the hearing of both applications and the tenants are not entitled to an amount double the security deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the

damage or loss bears the burden of proof. In this case, the tenants bears the burden of proof with respect to their claim to recover the cost of moving. The tenants must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant's doctor note states that being in an environment where there is smoke, second hand smoke, other toxins or toxic smells would have a negative impact on her health. However, the doctor's note does not prove that the rental unit was an unhealthy environment. While the tenant may require very particular living conditions, the landlord's obligation is a more general one: pursuant to section 32 of the *Act*, the landlord is obliged to provide a clean health sanitary rental property. I accept the landlord's submission that the tenant was aware of the condition of the rental unit prior to move in. The undisputed evidence provided at this hearing is that the tenants viewed the residence more than once prior to move in and that, after move-in, the landlords took further steps to put the rental unit in a condition that satisfied the tenants.

The condition inspection report, as the best evidence of the condition of the rental unit, indicated that the unit was generally clean but with some existing damage to the floors and trim at the outset of this tenancy. It also reveals, with the addendum note dated September 5, 2016 that the landlords had taken further steps (including washing all walls "to the satisfaction of the new tenants) and that all parties had acknowledged and initialled that those improvements had been done. I find that any cleaning done by the tenants was done for their own peace of mind and that it was not done because the landlord had failed to meet acceptable standards. Based on these findings, **I dismiss the tenants' claim to recover cleaning costs as well as the tenant's claim to recover moving costs:** both of these costs resulted from actions and decisions of the tenants, not of the landlords.

Given that both parties were partially successful in their applications, I find that both the tenants and landlords are responsible to bear the cost of their own \$100.00 filing fee.

Policy Guideline No. 17 provides that,

Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

In accordance with this guideline and section 72(2) of the Act, I will allow the landlord to retain a portion of the tenants' deposits to satisfy any monetary amount owed to him. The landlord will be required to return \$324.00 to the tenants.

Conclusion

I grant a monetary award to the tenants as follows,

Item	Amount
Tenants' Security Deposit & Pet Damage Deposit (<i>\$675.00 + \$325.00 + NO Interest</i>)	\$1000.00
Landlords' Loss of Rent (<i>11 mnths x \$50.00</i>)	-550.00
Carpet Cleaning at end of Tenancy (<i>owed by tenants to landlords</i>)	-126.00
Total Monetary Amount to Tenants	\$324.00

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 26, 2017

Residential Tenancy Branch