



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD OLC 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; an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenants' Application for Dispute Resolution ("ADR") as well as the tenants' evidence package both sent by registered mail.

Issue(s) to be Decided

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

Are the tenants entitled to an amount equivalent to their deposit for the landlord's contravention of the Act (that the landlord be required to comply with the Act)?

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

Background and Evidence

This tenancy began on October 1, 2015. The tenancy ended on September 30, 2016 when the tenants vacated the rental unit. The landlord continues to hold the tenants' \$675.00 security deposit paid at the outset of this tenancy. The tenants sought to recover their deposit and an amount equivalent to their deposit for the landlord's failure to comply with the Act in addressing the security deposit. The forwarding address was provided to the landlord by the tenant on the condition inspection report at move-out (September 30, 2016).

The tenants claim that, after a walk through inspection of the rental unit at the end of tenancy, tenant MM signed a condition inspection report that reflected a clean unit with no repairs beyond normal wear and tear during a tenancy. Further, Tenant MM testified that she believed that her whole security deposit would be returned to her. Tenant MM testified that, 9 days later, she

received a copy of the landlord's condition inspection report at the end of tenancy with additional information describing damage that was not in place when she signed the report.

The tenants both testified that they did not agree to deductions to their security deposit either in writing or in discussion with the landlord. The tenants both testified that they did not waive their right to their deposit or to an equivalent amount for the landlord's failure to return the security deposit in accordance with the Act. A copy of email correspondence between the parties was submitted as evidence for this hearing. The tenant requested documentation regarding the end of tenancy from the landlord on October 9, 2016. The landlord responded by email the same day providing copies of the condition inspection and noting repair costs.

The tenants emphasized that changes to the condition inspection report were made by the landlord and not authorized by them. The landlord testified that the tenants agreed with the landlord's retention of the whole security deposit which is why he felt no need to apply to retain the tenants' security deposit through the residential tenancy branch.

A copy of the condition inspection report was submitted for this hearing. The report indicated that;

- The kitchen taps, sink and stoppers must be cleaned/sanitized
- The refrigerator door was scratched
- The living room walls had excessive holes; paint needed
- A nail in the fireplace
- Bathroom walls have spots, stains
- Bathroom missing lightbulbs
- Master bedroom has moving marks, paint needed, excessive holes on walls
- Bedroom walls and trim has moving damage, smudges
- Blue stain in the corner of the storage area.

Tenant G testified that there were holes in the wall at move in and the unit had not been freshly painted, as the landlord testified. While the landlord confirmed that he intended to sell the rental premises after the tenants moved out, he testified that no renovations were done to the unit. However, the landlord also testified that he painted the rental unit, replaced the carpets and cleaned up the rental unit.

The summary of damage listed inside the portion of the condition inspection report where "damage to rental unit or residential property for which the tenant is responsible" indicates; fridge door; paint; floor (bath); cleanup; sink cleanup. While there is no amount listed as the amount to be deducted from the security deposit, the landlord claims that his costs amounted to over \$1260.00 to repair the rental unit. He submitted an invoice dated October 4, 2016 for \$1260.00 for repaint condo wall trim and doors at unit 206. In the email correspondence to the tenant dated October 9, 2016, "as a sign of goodwill I assessed only 50% of the total charge against your account."

At the bottom of the third page of the condition inspection report, the tenant signed in the following locations;

- Agree that this report fairly represents the condition of the rental unit
 - In two different locations
- agree to the following deductions from my security and/or pet damage deposit
 - With no amount indicated as a deduction
- Signature on Move-out

Within the portion of the condition inspection report where an amount of a deduction from the security deposit would be outlined, the spaces were blank. While no amount was listed as the deduction amount, the tenant signed the box indicating that she agreed to deductions. The landlord testified that the amount was not filled out because he did not know the cost of repairing the damage. He was unable to explain why he did not put an estimated amount. The landlord testified that the tenants agreed that he could keep their entire security deposit. The tenants denied that they agree to the retention of their deposit at all. The tenants were unable to explain why Tenant MM's signature was provided in the three locations on the condition inspection report listed above.

In a table submitted by the landlord, he estimated his costs and the amount owing by the tenants as follows,

Items Listed by the Landlord	Amount
Security Deposit	\$675.00
Painting Charge: 50%	-630.00
Cleaning Charge	-100.00
Fridge Door Repair	-120.00
Total Amount Owed by the Tenants	(\$175.00)

Analysis

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 security 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), the landlord may not make a claim against the deposit, and the landlord must pay the tenants an amount double the original value of the security deposit (section 38(6) of the *Act*).

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The tenants both testified that they did not agree to allow the landlord to retain any portion of their security deposit. However, the condition inspection report with Tenant MM's signatures in three locations, including the area provided to agree to

deductions suggests that the landlord and tenant had some agreement to retain all or part of the security deposit.

While I find that the landlord received written authorization at the end of this tenancy to retain any portion of the tenant's deposit, I find that the tenants did not agree to the retention of their entire deposit. As the landlord left the deduction portion of the condition inspection report blank, I will determine the appropriate amount for the landlord to retain in these circumstances by evaluating his claims raised at this hearing.

Based on the evidence before me, I find that the landlord has shown that the unit required repainting. However, I find that the landlord did not prove that he had painted the unit prior to the tenant's move-in. Given that Residential Tenancy Policy Guideline No. 40 suggests that a landlord should repaint a residential rental unit approximately every 4 years, I find that the landlord would have been required to repaint the unit within approximately 2 years of the end of this tenancy. Therefore, I find that the landlord is entitled to half the cost of painting: \$630.00.

The landlord indicated that the carpets were stained but that, prior to sale, he replaced all of the carpets. I find that the landlord would have taken these steps regardless of any damage by the tenants and therefore the tenants are not required to incur this cost. I find that the landlord is not entitled to any cost for damage to the carpets.

The landlord testified that a light fixture was missing but he did not submit a receipt for the cost of replacement. As the landlord did not provide detailed evidence as to the cost of the light fixture and as the condition inspection report does not indicate a missing light fixture, I find that the landlord is not entitled to any replacement cost for the light fixture.

The landlord noted moving marks on the ceiling and holes on the walls, primarily in the bedrooms. I find that this is normal wear and tear over the course of a tenancy of this length and find that the photographic evidence does not suggest anything out of the ordinary course. Given these findings and that the landlord chose to repaint the entire unit, I find that he is not entitled to recover costs with respect to the walls other than a portion of the painting costs.

The landlord testified, referring to the condition inspection report, that the sinks and taps in the kitchen needed cleaning. I find that the landlord is not entitled to recover a cost for any extra cleaning he required to the sinks and taps. I find that this cleaning is in the normal course of tenant move-in and move-out.

The landlord testified, referring to the condition inspection report, that the refrigerator door was damaged. That damage is shown in photographic evidence submitted for this hearing. In the condition inspection report, it does not show at move-in but shows at move-out. Therefore, I find that the landlord is entitled to \$45.00 towards any repair or replacement of the refrigerator door.

	Amount
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Amount owed to Tenants by Landlord	
<i>Security Deposit</i>	\$675.00
Amount owed to Landlord by Tenants	
Painting Charge: 50%	630.00
Fridge Door Repair	45.00
<i>Damages Cost</i>	\$675.00

I allow the landlord to retain the tenants' \$675.00 security deposit towards his costs at the end of the tenancy.

Given that the tenants have not been fully successful in their application, I find that they are not entitled to recover the cost of their filing fee.

Conclusion

I allow the landlord to retain the tenants' security deposit in full.

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: May 9, 2017

Residential Tenancy Branch