



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

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

- a. A monetary order in the sum of \$300 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

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

- a. A monetary order in the sum of \$1600 for an order for double the security deposit.
- b. 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.

Preliminary Matters:

The Application for Dispute Resolution filed by the Landlord claimed the sum of \$300. The landlord subsequently increased the claim to \$540.50 in the Monetary Order Worksheet but failed to file an Amendment to the Application for Dispute Resolution. I determined that I was limited to the amount claimed in the Application for Dispute Resolution.

The tenant delivered a stick containing a 14 minutes video and a second short video. The landlord responded that he could not open it because he uses a Mac. The tenants also delivered a similar stick to the Branch which could be opened without difficulty using Windows. When the landlord advised the Tenant he offered to facilitate the viewing through the use of Drop Box. The landlord declined. I determined the evidence

in the stick was admissible as the landlord has plenty of time to make arrangements to view it.

I dismissed the Tenants' application for an order to dismiss the landlord's application because the landlord failed to serve the Tenants separately by registered mail. Both Tenants appeared at the hearing and they were not prejudiced by the landlord's failure to separately serve them.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was sufficiently served on the Tenants by mailing, by registered mail to where the Tenants resided. I determined the Application for Dispute Resolution and Amended Application for Dispute Resolution filed by the Tenants was sufficiently served on the landlord. By mailing, by registered mail to where the landlord resides. 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 landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the Tenants are entitled to a monetary order and if so how much?
- e. Whether the Tenants are 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 June 1, 2016. The tenancy agreement provided that the tenant(s) would pay rent of \$1600 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$800 at the start of the tenancy.

The tenancy ended on March 31, 2017 by Mutual Agreement. The Tenants provided the landlord with their forwarding address in writing on that date.

I find that the landlord filed an Application for Dispute Resolution with the Tenancy Branch on April 13, 2017.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental

unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

The issue to be determined is whether the tenants sufficient cleaned the rental property. All of the evidence was carefully considered including the following:

- The oral testimony of the landlord and the Tenants.
- The photographs produced by the landlord
- Quotations obtained by the landlord
- The video evidence submitted by the Tenants.
- Documents and other evidence.
- The Condition Inspection Report although the Tenants did not agree with what was stated in that Report.

A determination of the claim of the landlord is complicated as the work has not been done and the landlord has not re-rented the rental unit.

.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

1. I determined the landlord is entitled to \$50 for the cost of cleaning. In particular I am satisfied the oven, windows and rails, the area around the toilet, an oil stain in the carport were not sufficiently cleaned. I carefully viewed the video produced by the tenants stopping at the timecode stops. I do not accept the submission of the Tenants that the video proves they fully cleaned the rental unit to the standard set in by the Act. However, I determined the landlord's claim was excessive as the work has not been done.
2. The landlord claimed \$100 for the material and labor cost of hiring an electrician to replace 1 range hood light, 6 halogen lights, 2 florescent tubes, 2 florescent lights. Policy Guideline #1 provides "2. The tenant is responsible for: ☐ Replacing light bulbs in his or her premises during the tenancy." The Tenants left 5 florescent lights. I accept the submission of the Tenants that where the light housing fails to work this is not the responsibility of the Tenants. I determined the landlord is entitled to \$25 of this claim.

3. The landlord claimed the sum of \$100 for damage caused to the baseboards in the main washroom. The landlord has not done this work. I determined the landlord failed to prove this claim and as a result this claim is dismissed.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$75 plus the \$100 filing fee (reduced to reflect the limited success of the landlord) for a total of \$175

Security Deposit

I determined the security deposit totals the sum of \$800. I determined the landlord is entitled to retain \$175 of this sum leaving a balance of \$625.

Tenant's Application:

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 of \$800 prior to the start of the tenancy. I determined the tenancy ended on March 31, 2017. I further determined the tenants provided the landlord with their forwarding address in writing on March 31, 2017. The parties have not agreed in writing that the landlord can retain the security deposit. However, the landlord filed a claim to keep the security deposit within 15 days of the end of the tenancy. As a result I determined the Tenants are not entitled to an order for the doubling of the security deposit.

I determined the Tenants are entitled to the return of the balance of the security deposit held by the landlord in the sum of \$625. .

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$625. I dismissed the Tenants' claim to recover the cost of the filing fee as they were not successful in their claim for the doubling of the security deposit and it was not necessary for them to file the

Application for Dispute Resolution. The female Tenant acknowledged she did not ask the Registry whether the landlord had filed a claim. The law provides that where an arbitrator is considering a landlord's application to retain the security deposit and the landlord fails to establish a claim for the whole amount, the arbitrator must order the landlord to return the balance of the security deposit to Tenants.

Conclusion:

I ordered the landlord to pay to the Tenants the sum of \$625.

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 the 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: June 29, 2017

Residential Tenancy Branch