



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: MND MNR MNSD MNDC FF For the tenants: MNDC MNSD

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (the “applications”) under the *Residential Tenancy Act* (the “Act”). The landlords applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain all or part of the tenants’ security deposit, and to recover the cost of the filing fee. The tenants’ applied for the return of double their security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlords, tenant T.M. (the “tenant”) and a tenant advocate attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. During the hearing the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

As tenant C.B. did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered in relation to tenant C.B. The landlords provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on tenant C.B. by registered mail on June 13, 2017. The landlords provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the tenant C.B. and the service address for tenant C.B. listed on the tenants’ application. The registered mail tracking number has been included on the cover page of this decision for ease of reference. Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. Based on the above, I find that tenant C.B. was deemed served as of June 18, 2017, in accordance with the Act. I note that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the Act.

Preliminary and Procedural Matter

At the outset of the hearing, the tenant stated that while she did not have the landlord's application she did not want an adjournment and was satisfied in proceeding after being provided the details of the landlord's application. As a result, the hearing continued with consideration of both the tenants' and the landlords' respective applications.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on May 19, 2016. Monthly rent of \$950.00 was due on the first day of each month. The tenants paid a security deposit of \$475.00 at the start of the tenancy which the landlord continues to hold and to which has accrued no interest.

The tenants have claimed for \$1,165.00 comprised of \$215.00 for the return of a check that the tenants allege the landlords cashed without authorization, and double the return of their \$475.00 security deposit.

The landlords have claimed \$957.69 which I find contained a mathematical error and I find the amount claimed actually totals \$917.67 as comprised below:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning	\$142.50
2. Loss of 19 days of December 2016 rent	\$735.00
3. Paint supplies and paint	\$145.17
4. Repair hole and paint bedroom	\$60.00
5. Carpet cleaning	\$100.00
6. Painting living and dining rooms and repair holes	\$150.00
7. Repair broken baseboard heater	\$60.00
SUB-TOTAL	\$1,392.67
(Less tenants' security deposit of \$475.00)	-(475.00)
TOTAL	\$917.67

The landlords confirmed that they did not complete an incoming condition inspection report or an outgoing condition inspection report. As a result, the landlords were reminded to comply with

sections 23 and 35 of the *Act* which require both reports to be completed under the *Act* and in accordance with the Regulation.

Evidence for Landlord's Claim

Regarding item 1, the landlords have claimed \$142.50 for cleaning of the rental unit which the tenant did not agree to during the hearing. As the landlords failed to complete a condition inspection reports and no photographic evidence was submitted, this portion was dismissed during the hearing due to insufficient evidence.

Regarding item 2, the parties confirmed that the tenancy ended due to an undisputed 1 Month Notice for Cause (the "1 Month Notice") that listed an effective vacancy date of November 30, 2016 on the 1 Month Notice. The parties confirmed that the tenants did not dispute the 1 Month Notice and did not vacate the rental unit until December 1, 2016. While the landlords claimed that the tenants did not return the rental unit keys until December 19, 2016, the tenant affirmed that she returned the keys on December 7, 2016. The landlords confirmed that they did not submit any ads in evidence to provide evidence that they attempted to re-rent the rental unit in December 2016.

Regarding items 3, 4 and 6, although the landlords have claimed \$145.17 for item 3, \$60.00 for item 4, and \$150.00 for item 6, which are all paint related supplies and repairs, consistent with my finding with item 1 above, these portions of the landlords' claim were dismissed during the hearing as the landlords submitted no photographic evidence that painting was required and failed to complete a condition inspection report.

Regarding item 5, the landlords have claimed \$100.00 for carpet shampooing, I note that the receipt was in the amount of \$189.00 and based on the testimony of the landlords included another unit so divided in half, the amount is actually \$94.50 and not \$100.00 as claimed. Furthermore, the tenant claims that she cleaned the carpets "probably around the 15th" but did not submit any evidence in support that the carpets were cleaning such as a receipt or invoice.

Regarding item 7, the landlords have claimed \$60.00 to repair a broken baseboard heater that the tenant claims was damaged at the start of the tenancy. The landlords provided an after photo but admitted that they did not have a before photo to compare the after photo to during the hearing.

Evidence for Tenants' Claim

The tenant testified that they are seeking the return of double their security deposit however the landlords testified that the tenants have never provided their written forwarding address in accordance with the *Act*. The tenant confirmed that the only address provided was on their application which I find does not constitute a written forwarding address pursuant to section 38 of the *Act*. As a result and during the hearing, the tenant was advised that their application for

double the return of their security deposit was premature as they have yet to provide the landlords with their written forwarding address to which to return their security deposit.

The tenant was also advised during the hearing, that their cheque for \$215.00 would not be returned by the landlords as the landlords were entitled to that full amount as I find that the tenants failed to vacate the rental unit by November 30, 2016 which was the effective vacancy date listed on the 1 Month Notice. Therefore, I dismiss the tenants' claim for the return of their \$215.00 cheque as I find the tenants owe the landlords \$215.00 for over-holding the rental unit between December 1, 2016 and December 7, 2016 as I find the keys were not returned to the landlords until December 7, 2016 based on the tenants testimony.

Analysis

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties to provide sufficient evidence to prove their respective claims and to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the parties must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the other party did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlords' claim

Items 1, 3, 4 and 6 – Firstly, I find the landlords have breached section 23 and 35 of the *Act* by failing to complete both an incoming and outgoing condition inspection report as required under

the *Act*. In addition, and as described above, I dismiss each of these items due to insufficient evidence without leave to reapply. I find the landlords have not met the burden of proof for these four items. In reaching this decision I note that the landlords failed to submit photographic evidence in support of their claim and did not have a condition inspection report to rely on in support of these items.

Item 2 – As described above, I find the landlords provided insufficient evidence to support that they complied with section 7 of the *Act* which requires that a party seeking compensation do what is reasonable to minimize their damage or loss. In the matter before me, I find the landlords provided no documentary evidence to support that they placed ads to re-rent the rental unit in December 2016. Therefore, I find the rental unit keys were returned on December 7, 2016 and that the tenants owe rent for seven days in the amount of **\$215.00** which I have rounded up from \$214.48 which is the per diem rent for seven days. As a result, I find the tenants owe the landlords that amount as the landlords suffered a loss of \$215.00 due to the tenants failing to vacate the rental unit and return the keys by 1:00 p.m. on November 30, 2016. I do not grant the landlords' claim of the full \$735.00 amount claimed however.

Item 5 – I find the tenant's testimony that she cleaned the carpets "probably around the 15th" to be vague and unreasonable as the tenancy did not end until several weeks later. As a result, I prefer the testimony of the landlords over that of the tenant for this item and as a result, I grant the landlords **\$94.50** which is the amount supported on the carpet cleaning invoice. I do not grant the full \$100.00 as claimed however as the actual amount was \$94.50.

Item 7 – I find the landlords have failed to meet the burden of proof for this item as the landlord did not provide photographic evidence showing a baseboard heater that was not damaged at the start of the tenancy and the tenant denied damaging the heating by indicating the baseboard heater was like that at the start of the tenancy.

As the landlords' application had merit, I grant the landlords the recovery of the **\$100.00** filing fee.

Tenants' claim

As described above, I find the tenants' claim for double the return of their security deposit was premature as I find the tenants have failed to provide the landlords with their written forwarding address in accordance with section 38 of the *Act* and that their application does not constitute their written forwarding address.

As noted above, I dismiss the tenants' claim for the return of their \$215.00 cheque as I find the tenants did not comply with section 7 of the *Act* and owe the landlords \$215.00 for over-holding the rental unit between December 1, 2016 and December 7, 2016 as I find the keys were not returned to the landlords until December 7, 2016 based on the tenants testimony.

Given the above, I find the landlords have established a total monetary claim of **\$409.50** comprised of \$215.00 for item 2, \$94.50 for item 5 plus \$100.00 for the recovery of the cost of the filing fee.

As the landlords continue to hold the tenants' security deposit of \$475.00 I **authorize** the landlords to retain **\$409.50** from the tenants' security deposit in full satisfaction of the landlords' monetary claim.

I ORDER the landlords to immediately return the tenants' security deposit balance of **\$65.50** to the tenants. Should the landlords fail to comply with my order, I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$65.50.

I caution the landlords to comply with sections 7, 23 and 35 of the *Act* in the future.

I caution the tenants to comply with sections 7 and 38 of the *Act* in the future.

Conclusion

The landlords' claim was partially successful.

The tenants' claim contained a portion that was premature and the remainder was dismissed.

The landlords have established a monetary claim of \$409.50. The landlords have been authorized to retain \$409.50 from the tenants' security deposit in full satisfaction of the landlords' monetary claim. The landlords have been ordered to immediately return the tenants' security deposit balance of \$65.50 to the tenants. Should the landlords fail to comply with my order the tenants have been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$65.50. If the tenants require enforcement of the monetary order, the tenants must first serve the landlords and then the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 10, 2017

Residential Tenancy Branch

