



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlord applied requesting a monetary order for damage to the unit; to keep all or part of a pet damage deposit or security deposit, and to recover the cost of the application fee.

The Tenants applied for compensation for damage or loss under the Act, regulations or tenancy agreement; for the return of the security deposit and to recover the cost of the application fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties testified that they exchanged evidence. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

Issues to be Decided

- Is the Landlord entitled to compensation due to damage to the rental unit?
- Can the Landlord retain the security deposit in partial satisfaction of the claim?
- Are the Tenants entitled to money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?
- Are the parties entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on May 30, 2014. Rent in the amount of \$1,500.00 was due on the first day of each month. The Tenants paid a security deposit of \$750.00 and a pet damage deposit of \$250.00 to the Landlord.

The Parties testified that the Tenants moved out of the rental unit on ~~April 30, 2017~~, **May 31, 2017.**

Landlord's Application

Damage

The Landlord is seeking to retain \$450.00 from the security deposit.

The Landlord testified that in February 2017, she became aware that the Tenants had damaged the laminate floor in the rental unit. She testified that the Tenant's agreed to repair the laminate floor prior to moving out.

The Landlord testified that she received a quote from a flooring company that it would cost \$350.00 to repair the floor.

The Landlord testified that the floor was not repaired at the time of the move out inspection, when the Tenants moved out on ~~April 30, 2017.~~ **May 31, 2017.**

The Landlord testified that she withheld the amount of \$350.00 for the cost of the floor repair and an additional \$100.00 for the cost of the filing fee for dispute resolution and returned the remainder of the deposits in the amount of \$550.00 to the Tenants using email money transfer on June 1, 2017.

The Landlord applied for dispute resolution on June 9, 2017.

The Landlord did not have the floor repaired prior to or after selling the rental unit.

The Landlord testified that the rental unit was in pristine condition when the Tenants moved into the rental unit. The Landlord submitted that the tenants are responsible to compensate her for the damage.

In response, the Tenants testified that in February 2017, the Landlord informed them she was selling the rental unit. When the rental unit sold, the realtor for the purchaser contacted the Tenants and arranged to come into the unit to take measurements. The Tenants testified that the purchasers informed them that they were planning to tear out the floors and that they did not need the floor to be repaired.

The Tenants provided a letter dated June 5, 2017, from Ms. K.E. that states she purchased the property with no condition that the four inch square of damaged floor would be repaired and with the intention to replace the existing flooring.

The Tenant's testified that at the move out inspection they informed the Landlord that they do not agree to pay for the repair of the floor because the purchaser is tearing the floor out.

The Tenants testified that the Landlord retained \$450.00 from the security deposit.

Tenant's Application

The Tenants are seeking the return of the security deposit in the amount of \$450.00 and to recover the cost of the filing fee. The Tenants are also seeking an additional \$450.00 because they feel the Landlord kept the money in bad faith.

Analysis

Residential Tenancy Policy Guideline # 16 Compensation for Damage or Loss addresses the criteria for awarding compensation and is intended to help parties to an application understand issues that are likely to be relevant. The Guideline provides:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *loss or damage has resulted from this non-compliance;*
- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off provides:

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

Landlord's Claims

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the Tenants are responsible for the damage to the laminate flooring; however, I find that there is insufficient evidence before me to establish that the Landlord suffered a loss. The Landlord did not have the damaged floor repaired prior to or after selling the rental property. The purchaser of the unit did not require the floor to be repaired.

The Landlord's claim to retain \$350.00 of the security deposit is dismissed.

Since the Landlords were not successful with their claim, I decline to award the cost of the \$100.00 filing fee against the Tenants.

Tenant's Claims

The Landlords did not establish a claim that they suffered a loss and the Tenants are entitled to have the security deposit of \$450.00 returned to them.

The Tenants claim for an additional \$450.00 due to bad faith is dismissed. The Landlords applied for dispute resolution within 15 days of the end of the tenancy as required by the Act. The Landlords application for dispute resolution to retain the deposit was within their rights. I make no finding of bad faith against the Landlord.

The Tenant's request to recover \$25.00 for the cost of postage to mail the evidence to the Landlord is dismissed. The Act does not specifically permit compensation for the cost of serving documents.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were mostly successful in their application, I order the Landlords to pay the Tenants \$100.00 for the cost of the filing fee for this hearing.

I grant the Tenants a monetary order in the amount of \$550.00 comprised of \$450.00 from the security deposit and the \$100.00 filing fee that the Tenants paid for the application. This order must be served on the Landlords and may be enforced in Provincial Court.

Conclusion

The Landlords' application to retain the security deposit was not successful and is dismissed.

I award the Tenants \$550.00 on their claim for the return of the security deposit and the cost of the filing fee.

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: November 21, 2017

Corrected: December 6, 2017

Residential Tenancy Branch