



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

The landlord and the tenants convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages to the unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. For a monetary order for money owed or compensation under the Act;
2. Return of double the security deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to monetary compensation for money owed?
Are the tenants entitled to return of double the security deposit and pet damage deposit?

Background and Evidence

The tenancy began February 2014. Rent in the amount of \$1,200.00 was payable on the first of each month. The tenants paid a security deposit of \$600.00 and a pet damage deposit of \$600.00. The tenancy ended on May 31, 2017.

A move-in condition was not completed in accordance with the Act.

Landlord's application

The landlord claims as follows:

a.	Damage to mirrored glass sliding doors	\$1,000.00
b.	Cleaning hrs at \$30.00 per hours	\$ 240.00
c.	Filing fee	\$ 100.00
	Total claimed	\$1,340.00

The landlord testified that the tenants broke three mirrors that were on sliding doors that were located in the master bedroom and the entrance. The landlord stated that they had to deduct that amount from the selling price. Filed in evidence are photographs.

The landlord testified that they had to take two days off a work to remove writing on the walls, clean the cabinets, and ensure the property was clean.

The tenants' testified they did not break the mirrors and that they are in the same condition as when the tenancy started.

The tenants testified that the rental unit was left clean at the end of the tenancy

Tenants' application

The tenants claim as follows:

a.	Compensation for landlord's use of property	\$1,200.00
b.	Double the security and pet damage deposit	\$2,400.00
c.	Filing fee	\$ 100.00
	Total claimed	\$3,700.00

The tenants testified that they should be entitled to compensation pursuant to section 49 of the Act as the landlord sold the property. The tenants acknowledged they did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property.

The tenants testified that they provided their forward address to the landlord by text message and again by email.

The landlord testified that the tenancy ended by mutual agreement. The landlord stated that the tenants purchased their own property at the end of the tenancy.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

Under section 37 of the Act, the tenants are required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The landlord did not complete a move-in condition inspection in accordance with the Act. The evidence of the landlord was that the tenants damaged three mirrors on the sliding doors and left the rental unit dirty. The tenant denies they caused damage to the mirrors or leaving the rental unit dirty.

In this case, the landlord has provided before photographs; however, they do not support the mirrored doors were not broken at the start of the tenancy as there is only one photograph of a door and does not show the entire door.

Further, the landlord has provided after photographs; however, they do not support the rental unit was left unreasonable clean. I find the landlord has failed to prove a violation of the Act. Therefore, I dismiss the landlord's claim for damages without leave to reapply.

Since the landlord was not successful with their application I find the landlord has no authority under the Act to retain the tenant's security deposit or pet damage deposit. Therefore, I find the landlord's must return to the tenants' their security deposit of \$600.00 and pet damage deposit \$600.00, forthwith.

Since the landlord was not successful with their claim, I find the landlord is not entitled to recover the filing fee from the tenants.

Tenants' application

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations

In this case, the tenants provided their forwarding address by text message and email. These methods of service are not permitted under section 88 of Act, when a party is required to serve documents such as their forwarding address. I find the tenants have not served their forwarding address in accordance with the Act. Therefore, I dismiss the tenant's application for return of double the security deposit and pet damage deposit without leave to reapply.

Tenant's compensation: section 49 notice

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, the tenants did not receive a notice to end a tenancy under section 49 of the Act. While the landlord sold the property, there was no requirement for the tenants' to vacate unless the new purchaser requested the landlord to serve notice to end the tenancy.

Further, the tenants' purchased their own property during this period and I find it more likely not the tenancy ended by mutual agreement. I find the tenants failed to prove they are entitled to compensation pursuant to section 51 of the Act. Therefore, I dismiss the tenant's application for compensation without leave to reapply.

Since the tenants were not successful with their claim, I find the tenants are not entitled to recover the filing fee from the landlord.

Conclusion

The landlord's application is dismissed without leave to reapply. The tenant's application is dismissed without leave to reapply.

As the landlord has not authority under the Act to retain any portion of the tenants' security deposit and pet damage deposit, I find it appropriate to grant the tenants a monetary order in the total amount of **\$1,200.00**, pursuant to section 67 of the Act for the return of their deposits.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the tenant.

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: December 11, 2017

Residential Tenancy Branch