



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TENANT: MNSD, MNDC, FF
 LANDLORD: MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlord filed seeking a monetary order for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of double the security deposit, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on September 13, 2017, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on August 31, 2017, in accordance with section 89 of the Act.

The Landlords and Tenants both confirmed that they received the other's hearing packages.

Preliminary matters

At the start of the conference call it was confirmed with both parties that they both received the other party's amended applications. The Tenant application was amended to include the filing fee of \$100.00 in the monetary claim. The Tenants claim was increased from \$4,600.00 to \$4,700.00. It should be noted the Tenants applied for the filing fee in their original application but the Tenants did not add the \$100.00 to their monetary claim.

The Landlords' amended application reduced their monetary claim from \$5,482.00 to \$982.00.

Both parties confirmed receipt of the other party's amendment.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Are the Landlords entitled to compensation for loss or damages and if so how much?
3. Are the Landlords entitled to retain the Tenants' security deposit?

Tenant:

1. Are the Tenants entitled to recover double the security deposit?

Background and Evidence

This tenancy started on March 16, 2015 as a fixed term tenancy with an expiry date of August 31, 2017. Rent was \$4,600.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$2,300.00 on January 28, 2015. Condition Inspection reports were completed on March 16, 2015 and July 31, 2017. The tenancy ended on July 31, 2017 by mutual agreement of the parties. The Tenants gave the Landlord their forwarding address in writing on the move out condition inspection report on July 31, 2017.

The Tenants said that when the move out condition inspection report was completed they agreed that they damaged two kitchen cabinet door panels when they were cleaning the unit. The Tenant said the cleaning product discoloured the 2 cabinet door panels. The Tenant said they were responsible and would pay for them. On August 2, 2017 the Tenants said the Landlords said that 6 kitchen cabinet door panels had to be replaced because they could not match the two damaged panels with the four remaining panels. The Tenants said they would not pay for 6 panels and the Landlord should not deduct anything from their security deposit. The Tenant presented an email sent to the Landlord August 2, 2017 (7:03 p.m.) that said the Landlord should not deduct any fees from the damage deposit until the issue is resolved. The Tenants said they told the Landlord that the issue should be resolved by using the Residential Tenancy Act.

The Tenants continued to say they received a cheque from the Landlord dated August 3, 2017 in the amount of \$1,418.00 and \$882.00 was deducted from their security deposit for the cost of repairing 6 kitchen cabinet door panels. The Tenants said they did not cash the cheque and they made an application to dispute the Landlord retaining \$882.00 of their security deposit without their consent. As a result of the Tenants application the Tenants are now applying for double their security deposit of \$2,300.00 in the amount of \$4,600.00 as indicated in section 38 of the Act.

The Tenants also requested to recover the filing fee of \$100.00 from the Landlord if their application is successful.

The Landlord said she believes that she followed the Residential Tenancy Act as the Tenants agreed on the move out condition inspection report and in an email dated August 2, 2017 that they damaged the kitchen cabinet door panels and they agreed they were responsible for the cost to repair the panels. The Landlord continued to say that she tried to repair only the two damaged panels but it was impossible to match the damaged panels to the 4 other panels so she had to repair all 6 kitchen cabinet door panels. The Landlord said she got quotes to replace the panels and to refinish the panels. The Landlord said the price was the same and both companies said all the cabinet door panels had to be replaced or refinished in order for them to match. The Landlord said that she believed that the Tenants had agreed to the cost of repairing the cabinet door panels so she deducted the cost to repair all 6 panels in the amount of \$882.00. Following this the Landlord sent a cheque to the Tenants for the remainder in the amount of \$1,418.00. The Landlord said she believes that she followed the Act and that she acted correctly.

On questioning the Landlord did agree that she was aware of the Tenants email of August 2, 2017 that says do not deduct any fees from the damage deposit. The Landlord said she also has an email on August 2, 2017 (11:26 a.m.) that says the Tenants take responsibility for fixing the panels. The Landlord said she took this as the Tenants agreeing to pay for the repairs to the kitchen cabinet door panels.

The Tenants said that they agreed they were responsible for the 2 damaged cabinet door panels but they did not agree to pay to repair or replace the other 4 panels. The Tenants say they told the Landlords not to deduct anything from their security deposit and the Landlords should apply for dispute resolution if they wanted to retain all or part of their security deposit. The Tenants said that since the Landlords did not apply to retain the security deposit and the Landlords did not return the full deposit within 15 days of the tenancy ending the Landlords are responsible to return double the security deposit to the Tenants pursuant to section 38 of the Act.

The Landlords agreed they did not make their application until September 13, 2017 which was 43 days after the tenancy ended but they believed they had the Tenants consent to retain the amount needed to repair the kitchen cabinets. The Landlord said this was a new unit when the Tenants moved in on March 16, 2015.

The Tenants said they agreed to repair the 2 damaged panels not all 6 panels. As a result there was a dispute about the return of the security deposit and the Landlords should have made an application to retain the security deposit. The Landlords did not apply in time therefore the Landlords' claim on the security deposit is not valid and the Act says the Landlord should pay double the deposit back.

The male Landlord said this was a miscommunication between the parties and he feels the penalty for their mistake is quite high.

The Arbitrator offered the parties an opportunity to voluntarily settle the dispute to show good will to each other. The Tenants declined the offer to discuss a settlement proposal.

Neither party had any closing remarks.

Analysis

I have reviewed the testimony and evidence submitted. In doing so, I read both emails of August 2, 2017. The first email is from the Tenants to the Landlord on August 2, 2017 at 11:26 a.m. It says the Tenants take responsibility for damage to two cabinet panels, but not to all 6 cabinet panels. The Tenants state they are happy to pay for the two panels they damaged. The second email was sent on August 2, 2017 at 7:03 p.m. This email clearly says the Tenants do not agree to any deduction from their security deposit and the Landlord should solve the issue using the Residential Tenancy Act. Further the move out condition inspection report indicates that 2 cabinet doors were damaged, but no agreement is signed for the Landlords to deduct anything from the Tenants' security deposit. Consequently, although there was agreement on the damage, I find there was no agreement between the Landlords and Tenants on deducting any amount from the security deposit. Therefore it was the Landlords responsibility to make an application to retain all or part of the security deposit within the stated time limits of the Act.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I find from that the Tenants did give the Landlords a forwarding address in writing on July 31, 2012. The Landlord did not repay the full security deposit to the Tenants within 15 days of the end of the tenancy or 15 days after receiving the Tenants' forwarding address in writing, nor did the Landlords apply for dispute resolution within the time limits. Consequently, I find for the Tenants and I award the Tenants double the security deposit of \$2,300.00 in the amount of $\$2,300.00 \times 2 = \$4,600.00$.

With regard to the Landlords' application, I dismiss the Landlords' claim on the Tenants' security deposit pursuant to section 38 of the Act, due to the Landlord's application being made after the time limit of 15 days from the end of tenancy. The Landlords have also applied for damages to the kitchen cabinets in the amount of \$882.00. The Tenants have agreed they are responsible for the damage to two of the cabinet door panels but do not think they are responsible for the repair of all 6 door panels. The Landlord says they tried to mitigate the cost of repairs to the cabinet door panels but found that it was impossible or impractical to repair just the two panels. The repair companies told the Landlord they could not match the two damaged panels to the other existing 4 panels and it would be more cost effective and more practical to repair all 6 to make sure the door panels matched.

Section 37 of the Act says: Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 32 of the Act says: Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and
(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I accept the Landlords testimony and evidence that they made their best efforts to repair the panels in the most cost effective manner that they could find. I also accept that since the unit was new 2 years ago the damage is not normal wear and tear and the rental unit would be devalued if the kitchen cabinets did not match. Consequently I award the Landlords damages for the kitchen cabinet door panels in the amount of \$882.00.

As both parties were successful in their applications I award the filing fee of \$100.00 to both the Landlords and the Tenants.

Pursuant to section 67 of the Act I award the Tenants the following monetary order:

	Double the security deposit	\$4,600.00
	Filing fee	\$ 100.00
	Sub total	\$4,700.00
Less	Damage award to Landlords	\$ 882.00
	Filing fee	\$ 100.00
	Sub total	\$ 992.00
	Balance owing to the Tenants	\$3,708.00

Conclusion

I find in favour of the Tenants' monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$3,708.00 to the Tenants. The order must be served on the Respondents and is enforceable through the Provincial Court of British Columbia (small claims court) as an order of that court.

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: March 05, 2018

Residential Tenancy Branch