



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, OLC, FF

Introduction

In the first application the tenants seek return of a security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “*Act*”).

In the second application the landlord seeks damages for cleaning of and repair to the premises.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show that the landlord is entitled to be compensated for any of the five items claimed in the Monetary Order Worksheet she has filed? Are the tenants entitled to the doubling penalty imposed by s. 38 of the *Act*?

Background and Evidence

The rental unit is a two bedroom apartment in an older, five-suite, two floor apartment building.

There is a written tenancy agreement. It shows the tenancy started in August 2015. The monthly rent was \$1200.00. The tenants paid a \$600.00 security deposit.

The tenancy ended June 30, 2017. There is a dispute about whether or not the tenants provided a complete and proper written notice to end their tenancy but no claim relates to it. The landlord found new tenants to commence July 1 and suffered no rental loss.

There was argument about whether the tenants were permitted to have the cat they kept at the apartment but in my view, none of the claims relate to that question.

The parties conducted a move-in inspection at the start of the tenancy and a report was prepared.

There is no evidence of a move-out report.

The landlord testifies that she called the tenant Mr. A.R. for a final walk through at the end of June but he did not answer or return her messages. She says she attended at the rental unit on June 30 after the tenants have moved all their belongings out and the tenant Ms. E.G. showed up requesting her security deposit back.

She told Ms. E.G. that the rental unit needed cleaning. Ms. E.G. asked how much it would cost. The landlord said she didn't know but that she would send her the invoice and the remainder of the deposit. The landlord testifies that the tenant Ms. E.G. agreed to this and provided a forwarding address in writing.

The landlord presents a cleaning company invoice in the amount of \$441.00. She says she sent the invoice, along with a bill for a \$9.90 lock and a cheque for \$150.00 to the tenants around July 7. The cheque was not cashed.

The landlord reviewed a number of photographs of the premises taken on that last day. They show the fridge and stove, the inside of a cupboard, a stained cupboard door, broken blinds, dust or hair on the floor in a closet, the bathroom ceiling, a portion of a wall, balcony railing and stairs, a door frame and extracts from what appears to be the tenant Ms. A.G.'s social media.

Mr. A.R. testifies that the oven photos only show crumbs. He says that the blinds were broken before move in and that when the tenants first rolled them down the breakage was discovered. He says the fridge's plastic retainers were cracked or broken before this tenancy and that the fridge never worked properly but the landlord wouldn't fix it. He denies damaging the balcony area and says other tenants used the area too.

He says that the bathroom ceiling damage claimed by the landlord was caused by moisture build up due to the lack of venting in the bathroom and by the fact that the bathroom window would not open properly.

He says he saw the landlord at the rental unit on the last day and there was no mention of damage to the rental unit..

The tenant Ms. E.G. testifies that at least four people were using the stairs the landlord claims were damaged. She says the fridge never worked properly. She claims the wall damage shown in the landlord's picture is merely a paint crack and she was told not to worry about it.

Analysis

The landlord has put herself in a difficult position by failing to comply with the rules regarding move-outs. Section 35 of the *Act* requires that a landlord give a tenant at least two opportunities to attend a move-out inspection and, if the tenant does not attend, the landlord must nevertheless prepare a condition report at that time.

To compound matters, the landlord testifies that the tenant Ms. E.G. went away on June 30, thinking that she would be liable for cleaning costs only and once those costs had been assessed, she would be receiving the remainder of the deposit money. This puts the tenants in a difficult position. The landlord in her applicaiton has expanded her claim thousands of dollars over the cleaning costs but the tenants no longer have access to the rental unit in order to assess or collect evidence about the landlord's extra claims. In reliance on the landlord's representative of a claim for cleaning only, they passed up the opportunity to acquire possibly valuable evidence for this case..

In my view the landlord must live by the agreement she made with the tenant Ms. E.G. on June 30; the tenants would be responsible for reasonable cleaning costs and nothing more. The landlord's claims for repair of alleged damage are dismissed.

Cleaning Costs

First, it should be kept in mind that a tenant vacating a property is responsible to see that it is left "reasonably clean" (s. 37(2)(a) of the *Act*).

The oven needed to be cleaned. I am not satisfied the stove top needed cleaning. The tin foil protector plates were stained and encrusted, as they might expect to be, and

likely needed replacement, but that cost is in my view insignificant. I find that the tenants were not responsible to remove the iron coil elements from their electrical sockets and clean underneath the stove top itself. They are not expected to be proficient at taking apart an electric stove.

The tenants were not responsible to pull out the stove and clean the sides normally hidden by the cupboards. Residential Tenancy Policy Guideline 1, "Landlord & Tenant – Responsibility for Residential Premises" makes clear that unless the appliances are on rollers a tenant need not pull them out for cleaning. There is no evidence that the stove was on rollers and I consider it unlikely that it was.

The fridge needed cleaning. Various shelves needed to be wiped down. The freezer compartment is not dirty. It is rusted and scarred from use. However, the tenants should have unplugged it or turned it off and cleaned out the moisture/ice in the compartment.

The tenants should have vacuumed in the closet shown in the landlord's photos.

The landlord has presented the bill from a cleaning company charging \$441.00 based on three people each working four hours at \$35.00 per hour. In my view that is well beyond any cleaning requirements disclosed by the landlord's evidence.

A cleaner so qualified as to justify a \$35.00 per hour fee should, in my view, be capable of attending to the cleaning items noted in this decision in a couple of hours. Any other cleaning would have been in an effort to bring the rental unit to a state beyond "reasonably clean" and the tenants are not responsible for the cost of that extra cleaning.

The Tenants' Security Deposit

As stated at hearing, s. 38 of the *Act* is strict. Unless a tenant has signed off on all or a portion of a deposit, once a tenancy has ended and the tenant's forwarding address has been received, a landlord has fifteen days to either a) repay the deposit money, or b) make an application for dispute resolution to keep all or a portion of it. If a landlord fails to do one or the other, the *Act* imposes a penalty by doubling the amount of deposit money remaining at the end of the tenancy.

This provision was legislated in an attempt to prevent landlords from unilaterally keeping deposit money after the end of a tenancy.

In this case the fifteen day period in s. 38 started on June 30. The landlord made her application August 24, well outside the fifteen day period. As a result, the tenants are entitled to the benefit of the doubling penalty. The amount of deposit money remaining at the end of the tenancy was the full \$600.00 deposit. The tenants are therefore entitled to an award of \$1200.00.

Conclusion

I award the landlord \$70.00. Given that the landlord has achieved only minor success in her application and that she failed to comply with mandatory legislated obligations regarding the move-out inspection and report, I decline to award recovery of the filing fee.

The tenants are entitled to an award of \$1200.00 plus recovery of the \$100.00 filing fee for their application.

The tenants will have a monetary order against the landlord for the difference of \$1230.00.

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: April 08, 2018

Residential Tenancy Branch