



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDC MND O FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing (a representative for the landlord and the two tenants) and were given a full opportunity to be heard, to present their affirmed testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, and/or for money owed or compensation for damage or loss under the *Act*?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on September 1, 2011. The parties have signed several written tenancy agreements during the course of this 6-year tenancy. A copy of the most recent tenancy agreement with a fixed end date of August 2017 was provided as evidence for this hearing. The rental amount of \$1950.00 was payable each month. The landlord

continues to hold a \$900.00 security deposit paid by the tenants at the outset of this tenancy. The landlord applied to retain the tenants' security deposit towards a monetary order of \$1276.14.

The landlord did not submit a monetary worksheet with a breakdown of their monetary claim nor did they submit copies of their costs to the Residential Tenancy Branch. However, the tenants provided a typewritten document responding to the landlord's costs and attached the invoices sent to the tenants by the landlord. I am satisfied that the tenants were aware of the nature of the landlord's claim based on their full response to the landlord's application. The landlord's receipt and claims do not equal the amount that the landlord claimed. To the best of my understanding, after review of the landlord's documents, the landlord sought compensation as follows,

Item	Amount
Garage Door remote purchase and set-up	\$131.25
Service call on oven range	156.45
Furnace service call	173.00
Light bulbs	29.97
Drain materials (new stopper)	12.50
Receipt for unidentified item	29.98
Closet doors	202.14
Recovery of Filing Fee for this Application	100.00
<i>Amount of Receipts provided by Landlord</i>	<i>(\$64.71)</i>

The tenants at this hearing disputed all of the items claimed by the landlord.

The landlord applied for compensation for the purchase of a garage door remote and the service cost for its setup claiming that the tenants returned no garage door remotes. The tenants pointed to the landlord's condition inspection report that indicated there were no garage door remotes given to the tenants at the start of this tenancy. The landlord's representative was unable to explain this discrepancy.

The landlord applied for compensation for carpet cleaning at the end of the tenancy. The landlord's representative withdrew this claim acknowledging receipt of an invoice

from the tenants that shows the carpets were professionally cleaned at the end of this tenancy.

The landlord applied for compensation for servicing of an oven range and a furnace. The landlord submitted receipts to reflect the costs of these services however the landlord's representative was unable to provide any information regarding the age of the rental unit, the age of the oven range or when the oven range had been serviced. The tenants provided undisputed testimony that the timer on the oven range (which appears to be what was repaired) was damaged at the outset of the tenancy. With respect to the furnace, the landlord provided a receipt however, again, no evidence regarding the age of the furnace, when it had been serviced last or why the tenants should be responsible for its maintenance were provided by the landlord.

The landlord applied for compensation for the cost of replacing light bulbs however, the tenants submitted receipts to show that they had purchase light bulbs during and at the end of the tenancy. Tenant TG provided undisputed testimony that her and her co-tenant left several new lightbulbs behind at the rental unit on move-out.

The landlord applied for compensation for the cost of replacing two closet doors. The tenants provided undisputed testimony that the closet doors were off their tracks at the outset of the tenancy and that several repair requests made by the tenants during the course of the tenancy regarding the closet doors met with no response from the landlord during the tenancy. The tenants submitted that the landlord provided no information regarding any attempt to mitigate the cost of mirrored closet doors with another less expensive item or to reduce the cost he chose to incur in replacing the doors.

The landlord applied for compensation for the cost of unclogging a drain however the receipt was dated after the end of the tenancy and the landlord's representative was unable to verify the details of the clog –its date or the nature of the clog. Another receipt in the amount of \$29.98 was submitted as part of the landlord's cost however no information on the receipt identified what had been purchased. This receipt was dated prior to the end of tenancy.

The landlord applied for compensation to paint and make repairs at the end of this tenancy. The tenants submitted photographs that illustrated the condition of the rental unit at move out. The landlord's representative did not dispute the authenticity of those photographs that illustrated a clean and tidy rental unit with no damage. Tenant TG and RG both testified that any touch ups to be done were done by them prior to them vacating the rental unit.

Analysis

When a landlord applies to retain a tenant's security deposit, as with any other monetary claim, the landlord must prove his claim for compensation with the appropriate evidence. In the case of damage to the rental unit, the condition inspection report is the best evidence to rely on in determining any disagreement at the end of the tenancy. A copy of the condition inspection report was submitted as evidence for this hearing however the report does not support the claims made by the landlord. I note that the tenants' photographs (undisputed as representing the unit at the end of the tenancy) showed a clean rental unit in good repair at the end of this tenancy.

To be successful in any monetary claim, the party making the claim (the applicant – here, the landlord) must provide evidence that, on a balance of probabilities, shows that the landlord suffered a loss as a result of the tenant's actions or neglect during the tenancy. The landlord must also show that any expenses or loss he incurs have been mitigated or minimized in order to maintain a reasonable balance of loss and gain between the parties.

I find that the landlord has provided insufficient evidence to prove that he has suffered a loss. The landlord did not present sufficient evidence that the items he refers to in his claim (i the furnace, the stove range, the garage door remotes, the light bulbs, the clogged drain, the painting and the glass doors) to prove damage during the course of the tenancy. In fact, the condition inspection report and other evidence by the tenants show that the unit was left in good condition, in accordance with the requirements of the Act. In the case of the garage door remotes, the condition inspection report reads that the landlord did not provide remotes to the tenants at the start of the tenancy.

I find the claims made for compensation by the landlord raise a question of the credibility of the landlord. The claims lack explanation to support a claim of damage. Some of the claims relate to items purchased during the course of the tenancy. Other claims are for items that were not provided to the tenants during the course of their tenancy. I find that the landlord's claim must be dismissed. I accept the tenants'

testimony at this hearing that the landlords' lacks proof of damage by the tenants, lacks evidence to support his claims for damage or loss, and lacks evidence that these losses are as a result of the actions of the tenants. In fact, the dates and other evidence submitted by the tenants suggests that these claims for damage by the landlord are not a consequence of their tenancy or actions at the end of that tenancy.

I find that the tenants, with clear and reliable testimony as well as documentary evidence, have rebutted any presumption of a legitimate claim or damage by the landlord. Therefore, the landlords application is dismissed in its entirety.

The tenants have not applied for the return of their security deposit but I provide section 38 of the Act as information for both parties receiving this decision.

Conclusion

I dismiss the landlord's application in its entirety.

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: May 07, 2018

Residential Tenancy Branch