



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNSD FFT
For the landlords: MNDLS FFL

Introduction

This hearing was convened as a result of the cross-applications of the parties for Dispute Resolution ("applications") under the *Residential Tenancy Act* ("Act"). The tenant applied for a monetary order for double the return of her security deposit and pet damage deposit and to recover the cost of the filing fee. The landlord applied for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain the tenant's security deposit and/or pet damage deposit, and to recover the cost of the filing fee.

The tenants and landlord MR ("landlord") attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

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.

Neither party raised any concerns about the service of documentary evidence. Both parties confirmed that they received and reviewed documentary evidence from the other evidence prior to the hearing. I find the parties were sufficiently served in accordance with the Act as a result.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit and/or pet damage deposit under the *Act*?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was not submitted in evidence. The parties did agree; however, that a month to month tenancy began on January 15, 2014 and that monthly rent was \$1,200.00 per month and due on the first day of each month. The parties also agreed that the tenants paid a security deposit of \$600.00 and a pet damage deposit of \$600.00 at the start of the tenancy which has accrued no interest to date and which the landlords continue to hold.

Landlords' claim

The landlords have claimed a total amount of \$2,474.35 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Kitchen light fixture	\$72.80
2. Garbage removal (A)	\$39.49
3. House cleaning	\$120.00
4. Rekey	\$68.62
5. Flea treatment	\$288.75
6. Window sill	\$39.40
7. Replacement carpet (A)	\$584.58
8. Replacement carpet (B)	\$1,233.82
9. Garbage removal (B)	26.89
TOTAL	\$2,474.35

Regarding item 1, the landlords have claimed \$72.80 for what the landlord claims was a broken kitchen light fixture. The parties agreed that the tenancy ended by way of an undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). The parties agreed that the tenants vacated the rental unit a few days after September 1, 2017 and did not remove a trailer, boat and chair until September 29, 2017.

The parties confirmed that a move-out condition inspection was originally scheduled for August 30, 2017 however the tenants requested that that date be rescheduled due to a funeral which the landlords agreed to do. The parties agreed that the move-out condition inspection was rescheduled for August 31, 2017 at 2:30 p.m. however the tenants later requested a different date as that was the birthday of one of the tenants. The landlord confirmed that the landlords rescheduled a second time for September 1, 2017 at

1:00 p.m. and the tenants did not attend the outgoing condition inspection and as a result, the landlords completed the outgoing condition inspection report ("CIR") without the tenants present.

The landlords did not note indicate a broken kitchen light was not listed on the CIR. The tenants denied during the hearing that they broke the kitchen light and as a result, this portion of the landlords' claim was dismissed during the hearing due to insufficient evidence which will be discussed further in this decision.

Regarding item 2, the landlords have claimed \$39.49 for garbage removal which is supported by the CIR. The landlord affirmed that the tenants had garbage throughout the rental unit which is supported by the CIR and the receipt submitted in evidence.

Regarding item 3, the landlords have claimed \$120.00 for the cost of house cleaning. The landlord referred to a receipt for that amount submitted in evidence, to the CIR which indicates the rental unit was dirty and photos of a dirty stove and kitchen. The tenants agreed that they did not clean behind the stove as the landlords were planning to renovate.

Regarding item 4, the landlords have claimed \$68.62 to rekey the rental unit as the tenants did not return the rental unit keys. The tenants did not deny that they failed to return the rental unit keys by September 1, 2017. The landlords submitted a receipt in the amount claimed for the cost to rekey the locks to the rental unit. The landlord also referred to the CIR which indicates that keys were not returned.

Regarding item 5, the landlords have claimed \$288.75 for flea treatment which was dismissed during the hearing as the landlords failed to indicate anything regarding fleas in the CIR submitted in evidence. This item will be addressed later in this decision.

Regarding item 6, the landlords have claimed \$39.40 to repair a window sill that the landlord affirmed was damaged by the tenants' dogs. The tenants affirmed that they have three small dogs which are 5 pounds, 11 pounds and 17 pounds respectively. The landlord did not dispute the tenants' description of the tenants' dogs. The tenants denied that their three small dogs damaged the window sill and that any marks on the window sill where there when they moved into the rental unit at the start of the tenancy. The landlord confirmed that no before photos of the window sill were submitted in evidence to compare the condition of the window sill to at the start of the tenancy. As a result, this item was dismissed during the hearing due to insufficient evidence which will be addressed later in this decision.

Regarding items 7 and 8, the landlords have claimed \$584.58 for item 7 and \$1,233.82 for item 8. Both items relate to the cost to replace the carpets in the rental unit that the landlords allege were damaged beyond reasonable wear and tear by the tenants. The landlord was unaware of the age of the rental unit carpets at the start of the tenancy and provided some photos in evidence which in my opinion showed dirty and worn carpets in the rental unit. As a result, items 7 and 8 were dismissed during the hearing due to insufficient and will be addressed further later in this decision.

Regarding item 9, the landlords have claimed \$26.89 for garbage removal specifically related to a treadmill left behind by the tenants. The landlord testified that the treadmill was considered garbage. The tenants did not deny that the treadmill left behind was garbage and as a result, the amount claimed of \$26.89 was granted to the landlords.

Tenants' claim

Regarding the tenant's claim, I will deal with extinguishment of the tenants' right to claim for their security deposit and pet damage deposit later in this decision below.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on each applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did what was reasonable to minimize the damage or losses that were incurred.

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.

Landlords' claim

Item 1 - The landlords have claimed \$72.80 for what the landlord claims was a broken kitchen light fixture. Due to the landlord's failing to provide any reference to the broken light fixture in the CIR and no photographs for my consideration I find the landlords have failed to meet the burden of proof for this portion of their claim. Therefore, I dismiss this portion of the landlords' claim due to insufficient evidence, without leave to reapply.

Item 2 - The landlords have claimed \$39.49 for garbage removal which I find is supported by the CIR and the receipt submitted in evidence. Based on the above, I find the tenants breached section 37 of the *Act* which requires the tenants to leave the rental unit in reasonably clean condition except for reasonable wear and tear. I find that leaving garbage behind in the rental unit is not reasonable and that the tenants are liable for the costs to remove the garbage as a result. Therefore, I find the landlords have met the burden of proof for this portion of their claim and I grant the landlords **\$39.49** accordingly.

Item 3 - The landlords have claimed \$120.00 for the cost of house cleaning. After considering the cleaning receipt for \$120.00 and the CIR, and having reviewed the photos which shows a dirty stove

area, I find the tenants failed to reasonably clean the rental unit and that the amount claimed by the landlords is reasonable. Therefore, I find the landlords have met the burden of proof for this portion of their claim and I grant the landlords **\$120.00** accordingly.

Item 4 - The landlords have claimed \$68.62 to rekey the rental unit as the tenants did not return the rental unit keys. As the tenants did not deny that they failed to return the rental unit keys by September 1, 2017 and given that section 37 of the *Act* requires that tenants return the access keys to the landlord at the end of the tenancy I find the tenants are liable for the cost to rekey the rental unit locks. Therefore, I find the landlords have met the burden of proof for this portion of their claim and I grant the landlords **\$68.62** accordingly.

Item 5 – The landlords have claimed \$288.75 for flea treatment which was dismissed during the hearing as the landlords failed to indicate anything pertaining to fleas in the CIR submitted in evidence. Given the above, I find the landlords have failed to provide sufficient evidence to support parts one, two and four of the test for damages or loss, without leave to reapply.

Item 6 - The landlords have claimed \$39.40 to repair a window sill that the landlord affirmed was damaged by the tenants' dogs. The landlords did not dispute that the tenants had three dogs weighing 5 pounds, 11 pounds and 17 pounds respectively. Given that the tenants denied that their three small dogs damaged the window sill and that any marks on the window sill were there when they moved into the rental unit at the start of the tenancy I find that by the landlords have failed to meet the burden of proof. In reaching this finding I have considered that the landlords failed to submit any photos of the window sill at the start of the tenancy to compare to photos taken at the end of the tenancy. I note that there was no condition inspection report at the start of the tenancy presented for my consideration. Based on the above, I dismiss this portion of the landlords' claim due to insufficient evidence without leave to reapply.

Items 7 and 8 - The landlords have claimed \$584.58 for item 7 and \$1,233.82 for item 8. Both items relate to the cost to replace the carpets in the rental unit that the landlords allege were damaged beyond reasonable wear and tear by the tenants. As the landlord was unaware of the age of the rental unit carpets at the start of the tenancy and provided some photos in evidence which in my opinion showed dirty and worn carpets in the rental unit I find it just as likely as not that the rental unit carpets had reached at least ten years of age by the end of the tenancy. According to Residential Tenancy Branch Policy Guideline 40 – Useful Life of Building Elements ("policy guideline 40") carpets have a useful life of ten years. Therefore, I dismiss items 7 and 8 as I find based on the photos submitted for my consideration that the carpets were more likely than not ten years old by the end of the tenancy based on the photos submit from 2016 when the landlords purchased the rental property and the end of tenancy date on September 1, 2017. Therefore, any amount would be 100% depreciated and the landlords would not be entitled to an amount for either item 7 or 8. In addition, I find the landlords have not met the burden of proof regardless so dismiss this portion of the landlords' claim without leave to reapply due to insufficient evidence.

Item 9 - The landlords have claimed \$26.89 for garbage removal specifically related to a treadmill left behind by the tenants. The landlord testified that the treadmill was considered garbage. The tenants did not deny that the treadmill left behind was garbage. Therefore, I find the tenants breached section 37 of the *Act* by leaving a treadmill behind in the rental unit that the landlords were forced to dispose of due to the tenants' action of leaving it behind. Therefore, I find the landlords have met the burden of proof for this portion of their claim and I grant the landlords **\$26.89** accordingly.

As the landlords' claim had merit, I grant the landlords the recovery of the filing fee in the amount of \$100.00 pursuant to section 72 of the *Act*.

Given the above, I find the landlords have established a total monetary claim of **\$355.00** comprised of \$39.49 for item 2, \$120.00 for item 3, \$68.62 for item 4, and \$26.89 for item 9, plus the recovery of the cost of the \$100.00 filing fee.

Tenants' claim

The tenants have claimed for the return of their \$600.00 security deposit and \$600.00 pet damage deposit under the *Act*. I will refer to the deposits as \$1,200.00 in combined deposits.

Regarding the move-out CIR, the parties confirmed that a move-out condition inspection was originally scheduled for August 30, 2017 however the tenants requested that that date be rescheduled due to a funeral which the landlords agreed to do. In addition, the parties agreed that the move-out condition inspection was rescheduled for August 31, 2017 at 2:30 p.m. however the tenants later requested a different date as that was the birthday of one of the tenants. There is no dispute that the landlords rescheduled a second time for September 1, 2017 at 1:00 p.m. and the tenants did not attend the outgoing condition inspection. As a result, the landlords completed the outgoing CIR without the tenants present. I find the tenants extinguished their rights to their combined deposits of \$1,200.00 pursuant to section 36 of the *Act* which states:

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

[My emphasis added]

Based on the above, I find the tenants extinguished all rights to the return of their combined deposits of \$1,200.00 once they failed to attend the rescheduled outgoing condition inspection scheduled for September 1, 2017 at 1:00 p.m. Based on the above, I dismissed the tenants' claim in full due to insufficient evidence, without leave to reapply.

As the tenant's claim did not have merit, I dismiss the tenant's request for the recovery of the cost of the filing fee without leave to reapply.

Conclusion

The landlord's application was partially successful. The tenant's application has no merit and is unsuccessful.

The landlord has established a total monetary claim of \$355.00 as described above. I authorize the landlord to retain the tenants' entire combined deposits of \$1,200.00 in full satisfaction of the landlords' monetary claim pursuant to section 36, 67 and 72 of the *Act* as I find the tenants extinguished their right under the *Act* to the return of the combined deposits. The landlords are not granted a monetary order as a result.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 7, 2018

Residential Tenancy Branch