



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenants requesting a return of the security deposit and a monetary order of \$5,202.42 for reimbursement of cleaning and repairs since the start of the tenancy. The Tenants also request an order for payment of the filing fee and other costs.

The Tenants had filed a previous application which was heard January 31, 2018; a decision was rendered dated February 1, 2018 which dismissed the Tenants’ application with leave to reapply as the Tenants had failed to satisfy the Arbitrator that the Landlord had been served with the Notice of Hearing in compliance with section 89 of the Residential Tenancy Act (“Act”). The Tenants re-applied under this current Application.

One of the Tenants appeared for the scheduled hearing; the Landlord did not appear, although I left the teleconference hearing connection open for 30 minutes in order to enable the Landlord to call into this teleconference hearing scheduled for 1:30 pm.

The Tenant who attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

The Tenant provided tracking numbers for three packages delivered to the Landlord, which included the Notice of Hearing and evidence, on February 2, 2018. The Canada Post tracking codes indicate that the Landlord signed for delivery on February 9, 2018. I am satisfied that the Landlord was properly served in accordance with section 89 of the Residential Tenancy Act.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issue(s) to be Decided

Are the Tenants entitled to a return of their security and pet deposit in the sum of \$2,000.00 pursuant to section 38 of the Act? Are the Tenants entitled to a doubling of the deposits paid to the Landlord?

Are the Tenants entitled to a monetary order pursuant to section 67 of the Act?

Are the Tenants entitled to payment of their filing fee pursuant to section 72 of the Act?

Background and Evidence

The tenancy began July 1, 2016 and ended July 16, 2017 by mutual agreement. It was a fixed one-year term agreement to end July 31, 2017. The rent payment was \$2,000.00 a month, plus 75% of utilities, payable on the first of each month. There was a \$1,000.00 pet and \$1,000.00 security deposit paid to the Landlord; evidence of payment was submitted into evidence.

The forwarding address was provided by the Tenants to the Landlord in the final Condition Inspection Report, a copy of which was submitted into evidence. The Tenant confirmed that this forwarding address was also mailed to the Landlord by registered mail shortly before the end of the tenancy and that a reminder was sent to her by email to retrieve the package, but it was returned undelivered.

The Tenant testified that they did not consent to the Landlord retaining those deposits and that no dispute claim was made by the Landlord to retain the \$2,000.00 within the required timelines. The Tenants are claiming double the deposits back, in the total amount of \$4,000.00.

The Tenants provided a copy of their Condition Inspection Report which was completed by a property manager in their presence, at the start of the tenancy. The report notes many concerns about the cleanliness, the walls/paint and the carpets being dirty. It was indicated that the Tenants could paint the walls, the Tenant having been a professional painter in the past.

The property manager was no longer employed by the owner shortly after the start of the tenancy. The Tenants then communicated directly with the owner, who was residing in a suite downstairs in the same home. The Tenant testified that the Landlord indicated verbally that she was prepared to cover the costs of painting and carpet cleaning, but that the reimbursement would likely be in January of 2018 when funds were available. The Landlord was not prepared to arrange or do any of the work herself.

The Tenants updated the Landlord on their progress with the cleaning and painting, emailing her photos and inviting her to view their work in person. The Tenant submitted photographs of

the rental unit from the start of the tenancy, during the work he performed and again at the end of the tenancy. Paint supply receipts were submitted and calculated, along with deductions for reimbursement of any supplies unused. The cost to paint all of the rooms, including doors/trim/baseboards (where needed), came to \$691.00. This did not include the cost of all the labour over the course of several weeks.

The Tenants were concerned that the carpets were filthy/unsanitary and had them cleaned professionally as they moved in. The Tenants also professionally cleaned the carpets at the end of their tenancy, as they had agreed to do in writing. The cost of the “move-in” carpet cleaning was \$294.36 and a receipt was submitted into evidence. The Tenant stated that the Landlord was not prepared to hire a cleaner, so it was understood that the Tenants would need to arrange for carpet cleaning.

The Tenants had various repairs that required attention and worked with the owner over the course of the tenancy to correct deficiencies. However, not all required work was completed, and the Tenant is claiming \$49.81 for a new laundry room faucet when they discovered it was leaking badly and a washer could not be purchased to do a simple repair. A receipt was submitted into evidence.

The final hydro bill was sent to the Tenant after the end of the tenancy for \$183.61 and the Tenant is claiming 25% or \$45.90 from the Landlord as her agreed-upon share of that utility cost. A copy of the bill was submitted into evidence.

Finally, the Tenants request reimbursement of \$21.18 for photo development costs and \$100.00 for their filing fee. The total monetary claim is \$5,202.42.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Landlord did not call into the conference call by 1:40 pm and she was properly served with notice of the dispute, I find the Landlord chose not to attend the hearing, which was then conducted in her absence.

Security Deposit:

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or file an application to claim against it. Section 38(4) (a) of the Act

also provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on July 16, 2017 by mutual agreement, pursuant to Section 44(1) (c) of the Act. I further accept that the Tenants provided their forwarding address to the Landlord on the Condition Inspection Report and in a registered letter, and that no dispute application was filed by the Landlord within 15 days of that notice. There is no evidence before me to suggest that the Tenants consented in writing to the Landlord retaining the security and pet deposits of \$2,000.00. Therefore, I must find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenants are entitled to double the return of their security deposit in the amount of **\$4,000.00**.

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

Under section 32 of the Act, the Landlord must provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation. The Tenants claim that the Landlord has failed to comply with this requirement and their claims for cleaning and repairs are addressed below:

Carpet Cleaning:

Policy Guideline 1 of the Residential Tenancy Branch states that “*at the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.*” The Tenant has provided sufficient evidence to show that the carpets were dirty and in need of cleaning at the start of the tenancy, and this was acknowledged in the move-in condition report with the property manager. I find that the Landlord is in breach of this requirement and that the Tenants are entitled for the costs incurred to clean the carpets, in the sum of **\$294.36**.

Painting and Wall Repairs:

Under Policy Guideline 1, a landlord is responsible for painting the interior of the rental unit at reasonable intervals to maintain it. The move-in inspection report and photographs showed a need for the walls to be patched and painted at the start of this tenancy. I find that the parties verbally agreed to have the Tenants carry out this work, with the intention that they would be reimbursed for the costs incurred. The Tenants mitigated their costs by doing the work themselves and by using the previous paint colour to avoid having to prime the walls, without charging for time and labour. The receipts for paint supplies less returns total **\$691.12**, which I award to the Tenants.

Faucet Replacement:

The Landlord is liable for repairs to plumbing, unless it is proven that the Tenant caused the plumbing concern. The Tenants attended to this repair after dealing with the Landlord on many concerns and issues during the tenancy. They attempted to mitigate costs by buying a washer, but found none could be purchased; the faucet replacement was necessary to stop the leaky plumbing and I find that the Tenants are entitled to **\$49.81** for this repair, which benefits the Landlord.

Utility Bill:

The parties agreed to share the utility costs and the Tenants had the hydro bill in their name which resulted in the bill that was submitted into evidence which they are liable to pay. The sum of **\$45.90** is for the Landlord's share of the final utility cost during the tenancy as per their agreement; I find that the Landlord is liable to pay this amount to the Tenants.

As the Tenants have been successful in this Application, I also grant the **\$100.00** filing fee pursuant to Section 72(1) of the Act. I am not prepared to award the cost of the photograph development.

As a result, the Tenants are issued with a Monetary Order for a total amount of **\$5,181.19**, calculated as follows:

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Item	Amount
Security deposit X2	\$4,000.00
Carpet cleaning	\$294.36
Painting and wall repairs	\$691.12
Faucet repair	\$49.81
Utilities	\$45.90
Filing Fee	\$100.00
Total Monetary Order	\$5,181.19

This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlord shall pay the sum of **\$5,181.19** forthwith to the Tenants.

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: September 25, 2018

Residential Tenancy Branch