



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* ("the Act").

On February 10, 2018, the Landlord applied seeking a monetary order for damage to the rental unit and to keep the security deposit or pet damage deposit in full or partial satisfaction of the claim.

On March 21, 2018, the Tenants applied requesting the return of double the amount of the security deposit and pet damage deposit.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before 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.

Preliminary and Procedural Matters

The Landlord's application and Notice of Dispute Resolution Hearing identifies that the Landlord is seeking \$981.14. At the start of the hearing the Landlord sought to increase the amount of her monetary claim. She testified that she has submitted documentary evidence in support of the additional amounts she is seeking.

The Residential Tenancy Branch Rules of Procedure were developed to ensure a fair, consistent and efficient process for resolving disputes for Landlords and Tenants. An applicant may amend an application for dispute resolution by completing an amendment form and filing it with the Residential Tenancy Branch and by serving the respondent with the amendment not less than 14 days prior to the hearing.

In the matter before me, I find that the Landlord did not properly amend her application. The Landlord did not complete an amendment form or file it with the Residential Tenancy Branch. The Landlord's claim is limited to the amount of \$981.14 that was indicated in the Notice of Dispute Resolution Hearing that was served on the Tenants.

The Landlord indicated that she may want to make an application for further claims against the Tenants. The Landlord was informed that she is at liberty to make a further application; however she cannot split a claim and she was encouraged to review the Residential Tenancy Branch Rules of Procedure.

Issues to be Decided

- Is the Landlord entitled to compensation due to damage to the rental unit?
- Can the Landlord keep the security deposit and pet damage deposit in full or partial satisfaction of the claim?
- Are the Tenants entitled to the return of double the amount of the security deposit?

Background and Evidence

The parties testified that the tenancy commenced on October 20, 2012, as a one year fixed term tenancy that continued thereafter on a month to month basis. The Tenants were to pay the Landlord monthly rent in the amount of \$2,750.00 by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,375.00 and a pet damage deposit of \$1,375.00. The Tenants provided a copy of the tenancy agreement.

The parties testified that the tenancy ended on January 31, 2018.

Landlords Application:

The Landlord testified that she found damage to the rental unit at the end of the tenancy.

The Landlord is requesting compensation for the following items:

Dishwasher Repair	\$531.14
Scratches on walls	\$250.00
Window Blinds	\$100.00
Filing fee	\$100.00
Total	\$981.15

Dishwasher Repair \$531.14

The Landlord testified that the dishwasher door was falling down and it needed new springs and hinges. She testified that the internal arm had fallen against the element and had melted.

The Landlord testified that she had the dishwasher repaired and the cost for the service, parts and labour is \$531.14. The Landlord testified that the dishwasher was purchased brand new in 2012 and installed by a plumber.

In reply, the Tenants testified that the son of the property manager installed the dishwasher in 2012. The Tenants testified that the dishwasher was working when they moved out and the Tenants showed the new tenants how to use it. The Tenants submit that the Landlord is attempting to claim for damage against them after the new tenants had moved in and used the dishwasher.

The Tenants also submitted that the Landlord failed to conduct a move out inspection with them at the end of the tenancy. They submitted that the Landlord failed to attend the scheduled meeting for the inspection.

Scratches on Walls \$250.00

The Landlord testified that she observed scratches on the dining room walls and found broken baseboards and holes in the walls in the basement.

The Landlord testified that she had the damages repaired and she provided an invoice for the cost of repair. She submitted that she had the scratched walls repainted. The Landlord provided photographs.

In reply, the Tenants testified that the paint was five years old. The Tenant testified that holes in the basement walls were there when the Tenants moved in. The Tenant provided time stamped photographs of the holes that were taken when they moved into the unit.

The Tenants submitted that they do not recall seeing any scratches on the walls or seeing any broken baseboards.

Window Blinds \$100.00

The Landlord testified that she found damaged aluminium blinds located in the bedroom, dining room, and kitchen. She testified that the blinds could not be repaired and need to be replaced. The Landlord submitted that she initially hoped the blinds could be flattened out. The Landlord testified that she received a quote for the replacement cost of the blinds. She testified that the blinds have not been replaced and are being used by the new Tenants.

In reply, the Tenants acknowledged that they are responsible for the damage to the kitchen window blind. The tenants submitted that two bars of the blind were bent at the corner.

The Tenants testified that they do not recall any damage to the blinds on the other windows.

Tenants' Application

Security Deposit and Pet Damage Deposit

The Tenants are seeking the return of double the amount of the security deposit and pet damage deposit. The Tenants submitted that the Landlord failed to conduct a move out inspection at the end of the tenancy.

The Tenants testified that they provided their forwarding address in writing to the Landlord using registered mail on January 31, 2018. The Tenants provided a copy of the letter that was sent to the Landlord.

The Tenants submitted that there was no agreement at the end of the tenancy that the Landlord could retain any amounts from the deposits.

In reply, The Landlord acknowledged that she received the Tenants forwarding address in the mail. The Landlord acknowledged that she is still holding the security deposit and pet damage deposit. The Landlord testified that her car broke down and she could not make it to the scheduled move out inspection.

Administrative Fee

At the hearing the Tenants withdrew their claim for a \$75.00 administrative fee.

Analysis

Landlords Application

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Dishwasher Repair \$531.14

Residential Tenancy Branch Policy Guideline #1 Responsibility for Residential Premises is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides that a Tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. A Tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The Tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the Tenant or his or her guest.

While I accept that the dishwasher required repair, I find that there is insufficient evidence from the Landlord that the Tenants are responsible for the damaging the dishwasher. The dishwasher was five years old and appliances sometimes break down. There is no evidence before me that the Tenants damaged the dishwasher deliberately or by neglect.

The Landlords claim for \$531.14 is dismissed.

Miscellaneous Damage \$250.00

I find that there is insufficient evidence from the Landlord to establish that there was damage to baseboards. I find that the Tenant has provided photographic evidence that established there were holes in the basement wall when the Tenants moved into the unit.

The Landlord's claims for damage to baseboards and holes in walls are dismissed.

A Landlord is responsible to periodically repaint the interior of a rental unit. Residential Tenancy Branch Policy Guideline #40 provides that the useful life of interior paint is four years. I accept the Tenant's unopposed submission that the interior paint was five years old when they moved out. I find that the Landlord's photographic evidence shows a couple of small areas of damage. Accordingly, I award the Landlord a portion of the claim.

I grant the Landlord \$75.00 for the cost to repair the marks and gouges on the walls.

Window Blinds \$100.00

I find that the Tenants are responsible for damage to the three blinds. The Tenants acknowledged damaging the kitchen blind and I accept the Landlord's photographic evidence that the other blinds had damage.

I grant the Landlord \$100.00 for the damage to the blinds.

Tenants' Application

Security Deposit

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposits within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposits.

The Guideline also states that the right of a Landlord to obtain the Tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required.*

I find that the Tenants provided their forwarding address to the Landlord using registered mail on January 31, 2018.

I find that the Landlord received the Tenants' forwarding address and claimed against the deposits by filing for dispute resolution on February 10, 2018. I find that the Landlord applied against the deposits within 15 days of receiving the Tenants' forwarding address.

I find that the Landlord failed to attend the move out inspection and consequently, the Landlord's right to claim against the security deposit is extinguished.

The Tenants are awarded the return of the security deposit and pet damage deposit in the amount of \$2,750.00.

While the Landlords right to claim against the deposits is extinguished, the Landlord retains the right to pursue claims for damage to the rental unit.

An Arbitrator has the right to apply a deposit towards any amounts awarded to a Landlord.

I find that the Landlord has established a claim in the amount of \$175.00.

After setting off the award of \$175.00 against the deposits of \$2,750.00, I find that the Landlord owes the Tenants the amount of \$2,575.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As both parties had some success with their application, I decline to award the cost of the filing fees.

I grant the Tenants a monetary order against the Landlord in the amount of \$2,575.00. The order must be served on the Landlord and may be enforced in the Provincial Court.

Conclusion

The Landlord established a claim against the Tenants in the amount of \$175.00.

The Tenants are awarded the return the \$1,375.00 security deposit and \$1,375.00 pet damage deposit.

After setting off the awards, I grant the Tenants a monetary order in the amount of \$2,575.00.

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: September 14, 2018

Residential Tenancy Branch