



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNSD MNDC

Landlord: MND MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on September 6, 2018.

The Landlords and the Tenants both attended the hearing. Both parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with the return of the security deposit, whether or not the Tenants are entitled to a return of double the deposit, and whether or not the Landlord may retain some of the deposit for damages.

As a result, I exercised my discretion to dismiss, with leave to reapply, the following ground on the Tenants' application, as it was largely unrelated to the issues with the security deposit:

- A monetary order for compensation for loss or other money owed (aggravated damages etc).

Issue(s) to be Decided

Tenant

- Are the Tenants entitled to the return of double the security deposit held by the Landlords?

Landlord

- Are the Landlords entitled to compensation for damage to the rental unit?
- Are the Landlords entitled to keep the security deposit to offset the amounts owed by the Tenants?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that:

- The tenancy began in March of 2015, and that it ended on January 31, 2018, the day the Tenants moved out.
- The Landlords still hold \$1,550.00 as a security deposit
- The Tenants provided, and the Landlords received, the forwarding address in writing on January 31, 2018.
- The Landlords and the Tenants did a walkthrough at the start and end of the tenancy but the Tenants never signed the condition inspection report because they did not agree with the Landlords' opinion of the condition.

The Landlords are looking to recover \$776.15 for the costs associated with cleaning and repairing the rental unit. The Landlords stated that the Tenants left the unit very dirty and damaged some of the flooring, which was new at the start of the tenancy. The Landlords provided a copy of the condition inspection report but it is not signed by the Tenants for the move-in or the move-out portion. The move-out portion of the condition inspection report is also not filled in.

The Tenants stated that the Landlords mailed them a cheque for \$773.85 (security deposit of \$1,550.00 minus \$776.15) but this cheque was not signed and so they could not cash it. They asked for another cheque but never got one, and so the Landlord still holds the full deposit. The Landlord filed an application against the deposit on February 7, 2018. Subsequently, the Tenants filed for the return of double the security deposit because the Landlords failed to return it.

The Landlords provided a monetary order worksheet and photos to accompany the following items:

Item #1-3 – cleaning supplies purchased (\$32.70, \$10.22 as per receipts) as well as 6 hours of labour the Landlords spent cleaning up the mess. The Landlords are seeking \$15.00 an hour for the 6 hours they spent cleaning. The Landlord provided photos showing that the tiles were covered in grime, the toilet/bathroom was dirty, the baseboards were dirty, and the kitchen was generally filthy.

The Tenants stated that they do not believe it was that dirty, and stated that they cleaned up before they left.

Item #4 – The Landlords stated that they had to hire someone to come in and clean the stove and hood fan because it was so badly soiled with baked on dirt. They provided evidence that this cost them \$200.00.

The Tenant stated that they cleaned before they left, so it was not that dirty.

Item #5 and 6 – an invoice for \$35.79 and \$56.76 was provided by the Landlords as evidence that they had to replace some of the stove parts due to how badly burned and soiled they were from the Tenants.

Item #7-10 – the Landlords are seeking to recover the following amounts for the repair of the cork flooring: \$11.10, \$86.51, and \$178.08 for the tools and product required to refinish the heavily scratched part of the cork flooring. Receipts were provided into evidence. The Landlords are also seeking to recover 5 hours labour at \$15.00 per hour for the time it took to refinish the damaged parts of the floors.

The Tenants stated that they did not damage the floors and the floors seemed to have damage at the start of the tenancy. The Tenants deny doing this damage.

The Landlords stated that they replaced the cork floors in 2015, right at the start of the tenancy, and when the Tenants moved out, the floors were significantly damaged and needed refinishing. The Landlord provided a couple of photos of the scratched flooring. The flooring in these photos appears to be a wood/laminate flooring, rather than the cork flooring they spoke about in the hearing. The Landlords stated that the cork flooring was mostly in the basement and the upper floor had some different flooring.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

I first turn to the Landlords' claim for compensation in the amount of \$776.15. I note there is no signed condition inspection report. The parties appear to disagree on the condition at the start and at the end of the tenancy. I have placed little weight on this report as it has not been properly completed and the move-out portion is blank. I find the photographic evidence at the end of the tenancy is more helpful in determining some of the issues below. I make findings on the individual items as follows:

Item #1-3 – I find the Landlord has provided more compelling evidence as to the condition of the rental unit at the end of the tenancy, and the photos indicate the Tenants failed to properly clean the unit prior to leaving. I find the Landlord's claim on this point is reasonable, and I award \$32.70 plus \$10.22 for cleaning products as well as 6 hours of labour the Landlords spent cleaning up the mess, which totals \$132.92.

Item #4 – 6 – I find the Landlord's photographic evidence as to the condition of the stove/hood fan is more compelling than the Tenants testimony and evidence.

I find the stove looks extremely messy and soiled. It is not unreasonable that some of the stove parts were so coated in burned food that they had to be replaced. I award the Landlord the \$200.00 they spent to have this area cleaned properly at the end of the tenancy and also the \$35.79 and \$56.76 they spent to replace the stove pans.

Item #7-10 – I have reviewed the Landlords' claim on this matter, and I note the Landlord has provided some photos of floor damage. They pointed to these photos as evidence that the cork flooring was damaged by the Tenants. After reviewing these photos, I note the flooring in these photos appears to be a wood/laminate flooring, rather than the cork flooring they spoke about in the hearing. The Landlords stated that the cork flooring was mostly in the basement and the upper floor had some different flooring.

In any event, I find the photos do not sufficiently support the Landlord's allegations on this matter. It is not sufficiently clear that the photos taken are of the damaged "cork" floor they spoke about in the hearing, since the photos appear to be of a wood grained floor. I find the lack of clarity on this point leads to me question the reliability of these flooring photos. Ultimately, I find there is insufficient evidence to show that the Tenant caused the alleged damage to the "cork" floors. Given my findings on this matter, I dismiss the Landlord's claim to recover the costs for items #7-10.

I find the Landlords are partly successful with their claim and are entitled to \$425.47, as above.

With respect to the Tenants' application to recover double the security deposit, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the evidence and testimony confirmed the Landlords were in receipt of the Tenants' forwarding on January 31, 2018, the same day the tenancy ended. The Tenants may have been entitled to double the security deposit if the Landlords failed to

file an application against the deposit, or return it, within 15 days of January 31, 2018. However, the Landlords filed an application against the deposit on February 7, 2018, which was within the allowable time. As such, I find the Tenants are not entitled to double the security deposit.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were largely successful in this hearing, I award them the \$100.00 they paid to file this application and I decline to award the Tenants the amount they paid.

In summary, the Landlords are awarded \$425.47, as above, plus \$100.00 for the filing fee. The Landlords currently hold \$1,550.00 as a security deposit. I allow the Landlords to retain \$525.47 from the deposit and return the remaining balance to the Tenants. I will issue a monetary order to the Tenants for the remaining portion of the security deposit, \$1,024.53.

Conclusion

The Tenants are granted a monetary order pursuant to Section 38 and 67 in the amount of **\$1,024.53**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 7, 2018

Residential Tenancy Branch