



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD (Tenants)
 FFL, MNDL-S (Landlords)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application June 25, 2018 (the “Tenants’ Application”). The Tenants applied for the return of double the security and pet deposits. The Tenants sought reimbursement for the filing fee.

The Landlords filed their application July 3, 2018 (the “Landlords’ Application”). The Landlords applied for compensation for damage to the unit. The Landlords sought to keep the security and pet deposits. The Landlords sought reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlords’ Application states they are requesting \$5,000.00; however, the Landlords submitted a Monetary Order Worksheet seeking \$6,085.28. The Landlords did not file an amendment. I addressed this with the parties and the Landlord agreed to limit the claim to \$5,000.00 as stated in the Landlords’ Application.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to the return of double the security and pet deposits?
2. Are the Tenants entitled to reimbursement for the filing fee?
3. Are the Landlords entitled to compensation for damage to the unit?
4. Are the Landlords entitled to keep the security and pet deposits?
5. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Processing fee	\$100.00
2	Registered mail	\$55.02
3	Paint	\$144.61
4	Flooring	\$2,720.34
5	Paint	\$600.00
6	Restoration	\$1,000.00
7	Plumbing	\$1,522.50
	TOTAL	\$6,085.28

As stated above, the Landlord limited the claim to \$5,000.00 and that is the amount I will consider. Further, I will not consider item 2 as parties are not entitled to reimbursement for the costs of serving documents.

A written tenancy agreement was submitted as evidence. It is between the Landlords and Tenants in relation to the rental unit. The agreement was for a term from December 1, 2017 to May 31, 2018. The Tenants paid a \$875.00 security deposit and \$325.00 pet deposit.

The parties agreed the Tenants vacated the rental unit May 31, 2018. The parties agreed the Landlords still hold the deposits.

The Tenant testified that the Tenants' forwarding address was provided to the Landlords in writing May 31, 2018. She said the Tenants also sent a follow up message June 15, 2018. The Landlord denied receiving the Tenants' forwarding address in writing May 31, 2018. She acknowledged receiving the forwarding address via text June 15, 2018.

The parties agreed the Landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy. The parties agreed the Tenants did not agree in writing that the Landlords could keep some or all of the deposits at the end of the tenancy.

The parties agreed no move-in inspection was done. The Landlord confirmed the Landlords did not offer the Tenants two opportunities to do a move-in inspection.

The parties agreed no move-out inspection was done. The Landlord confirmed the Landlords did not offer the Tenants two opportunities to do a move-out inspection.

The Landlord confirmed that the compensation requested relates to an issue with the hot water tank.

The Landlord testified she did a walk-through of the rental unit March 5th and there was no water damage in the home. She said on May 31st, water damage was discovered in the home. She said the Landlords noticed bubbling in the floor. She testified that the valve on the side of the hot water tank had been leaking.

The Landlord referred to a letter from a plumber submitted as evidence. It relates to replacement of the hot water tank. It states that the hot water tank leaking issue could have been solved sooner if the Tenants listened to the tank leaking and/or noticed the significant humidity within the house. The letter states that this would have prevented serious water damage and the hot water tank could have been fixed with a new valve. The letter states that the plumber noticed overwhelming humidity in the home and it was his opinion the leak was going on for a minimum of two weeks and likely two months.

The Landlord testified that the hot water tank is in a high traffic area of the house. The Landlord did not submit that the Tenants caused the leak. She submitted that the

damage would not have occurred if the Tenants had notified the Landlords of the issue sooner.

The Landlord testified that the water leaked into the crawl space and that a restoration company had to come in to address the issue. She said there were water marks on the walls in the rental unit from the humidity. The Landlord testified that there was mold in the window sills of the rental unit. The Landlord testified that the floor had bubbled and has a split seam from the water damage.

The Landlord testified that half of the wall in one of the bedrooms has to be taken out because of the water damage. She explained photos submitted showing the hall and kitchen floor being ripped up.

The Tenant testified that the hot water tank was not visible as it was behind bifold doors. She said the Tenants did not use the pantry that was in the room with the hot water tank. The Tenant testified that the Tenants did not notice the leak in the hot water tank. The Tenant said the Tenants told the Landlord about the humidity and the floor. The Tenant said the floor had always had bubbling and that they told the Landlord on April 20th that it was worse than normal and the Landlord said it was fine. The Tenant said the Tenants did not know what was causing the humidity. The Tenant submitted that it was the Landlord's job to look into the humidity issue when advised of the issue. The Tenant testified that there were no visible signs of water leaking or water damage other than the floor and humidity, both of which they told the Landlord about.

The Landlord denied that the Tenants told her about the floor and humidity in the rental unit. The Landlord agreed the hot water tank was behind bifold doors.

In relation to the request for \$144.61 for paint, the Landlord testified that this relates to the cost of supplies to paint the pantry and area around the hot water tank from the water damage. The Landlord also testified that there was damage from the Tenants' pet on the walls such that they needed to be filled and sanded. The Landlord testified that the humidity caused water streaks on the walls which could not be wiped off and had to be painted. The Landlord said the paint in the pantry was five years old.

The Tenant disputed that the walls in the pantry area were water damaged.

In relation to the \$2,720.34 requested for flooring, the Landlord testified that this amount is not for the water damaged floor but the two rooms that were not water damaged. She said the flooring in these rooms had to be replaced to match the remainder of the floor.

She confirmed that the Landlords' insurance paid for the remainder of the water damaged floor. The Landlords had submitted an invoice for this; however, there is no explanation on this in relation to what was done, where or why. The Landlord testified that the flooring was 14 years old.

The Tenant testified that the Tenants do not know of any issue with the floor other than a spot that was bouncy which was known. The Tenant said that if there was damage to the floor, there was no visible damage other than the area the Landlords were told about.

In relation to the \$600.00 requested for paint, the Landlord testified that this was for materials and labour for a painter to attend and fix damage to walls caused by the Tenants' dog. The Landlord testified that this did not relate to the hot water tank issue.

The Tenant denied that the Tenants' dog damaged the walls and denied that the wall damage was caused by the Tenants.

In relation to the \$1,000.00 for the restoration company, the Landlord testified that the Landlords had to pay the insurance deductible of \$1,000.00 and did so to the restoration company. The Landlord testified that the company attended and installed de-humidifiers, tore up the floor, took out baseboards and walls and fixed the flooring and drywall. The Landlord said their insurance covered all except the \$1,000.00 deductible.

The Tenant reiterated her position that the Tenants were unaware of the leak and therefore are not responsible for the damage.

In relation to the plumbing charge of \$1,522.50, the Landlord said this was to replace and install the hot water tank. The Landlord could not explain the damage to the hot water tank or why the delay in the Tenants reporting the problem caused further damage to the hot water tank. The Landlord said their insurance company told them to replace the hot water tank.

The Tenant reiterated her position that the Tenants were unaware of the leak and therefore are not responsible for the damage.

In relation to the Landlords minimizing the damage, the Landlord stated that they did what their insurance company told them to do. The Tenant submitted that the Landlord should have investigated when the Tenants told her about the floor issue.

The Landlord submitted photos of the rental unit prior to the tenancy; however, these consist of six general photos mostly of outside.

The Landlord submitted photos of the rental unit upon move-out. These show one wall scratched or damaged, mold or dust on two window sills and streaks on one wall of the rental unit. The Landlord also testified that one of the photos is of the “swollen” door to the crawlspace.

The Landlord submitted photos of the hot water tank, flooring being ripped up and wet flooring.

The Landlord submitted two witness letters about the state of the unit on May 31, 2018. These state that there was bubbling in the floor, a musty smell and scratches on the walls.

Analysis

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet deposits if they do not comply with the *Act* and *Residential Tenancy Regulations*. Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet deposits at the end of a tenancy.

There was no issue that no move-in or move-out inspections were done. Nor was there an issue that the Landlords did not offer the Tenants two opportunities to do a move-in or move-out inspection. Given this, I find the Tenants did not extinguish their rights in relation to the security and pet deposits under sections 24 or 36 of the *Act*. Further, I find that the Landlords did.

I am not satisfied that the Tenants provided their forwarding address to the Landlord on May 31, 2018. However, the Landlord acknowledged receiving the forwarding address June 15, 2018. I find the Landlords' obligations under section 38(1) of the *Act* were triggered on June 15, 2018 when the Landlord received the Tenants' forwarding address.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from June 15, 2018 to repay the security and pet deposits or file an application for dispute resolution claiming against them. However, given the Landlords had extinguished their right to claim against the security and pet deposits for damage to the rental unit, the only options open to the Landlords were to return the security and pet deposits or claim against them for something other than damage. The Landlords did not return the deposits. Further, the Landlords' Application relates to damage to the rental unit. In the circumstances, I find the Landlords failed to comply with section 38(1) of the *Act*. Therefore, pursuant to section 38(6) of the *Act*, the Landlords cannot claim against the security or pet deposits and must return double the deposits to the Tenants. The Landlords must return \$2,400.00 to the Tenants.

The Landlords are still entitled to seek compensation for damage to the rental unit and I consider that now.

I have no evidence from a move-in inspection about the state of the rental unit at the start of the tenancy as no move-in inspection was done. Nor do I have evidence from a move-out inspection about the state of the rental unit at the end of the tenancy as one was never done.

The only evidence submitted in relation to the condition of the rental unit at the start of the tenancy are six general photos, mostly of the outside of the house.

The photos submitted of the rental unit at the end of the tenancy show a wall that is scratched or otherwise damaged. The Landlord submitted that this was caused by the Tenants' pet. The Tenant denied this. There is no photo of this wall from the start of the tenancy. I am not satisfied that the Tenants or their pet caused the damage to the wall.

The Landlord submitted that the Tenants knew, or should have known, about the leak in the hot water tank. The Tenant denied knowing about the leak in the hot water tank.

The Landlord submitted that the hot water tank was in a high traffic area. The Tenant submitted that it was behind bifold doors in the pantry area that the Tenants did not use. The Landlord did not provide evidence that the Tenants did use this area. I do not accept that the hot water tank was in a high traffic area such that the Tenants knew, or should have known, about the leak.

The Landlord pointed out that the plumber said the leak could have been occurring for two weeks to two months. The Landlord was not able to provide much detail about the leak. I am not satisfied that the Tenants knew, or should have known, about the leak based on the timeframe of the leak as described by the plumber.

The Landlord provided evidence that the rental unit was very humid. The Tenant acknowledged this and said the Tenants told the Landlord this. The Tenant testified that the Tenants did not know the cause of the humidity. I am not satisfied based on the evidence provided that the humidity in the rental unit was such that the Tenants knew, or should have known, about the leak.

The Landlord provided evidence about a bubbling floor and water damage to walls in the unit. The only photographic evidence provided in this regard is one photo of a wall with streaks on it and a photo of a "swollen" crawlspace door. Neither of these two photos satisfy me that the water damage in the unit was visible such that the Tenants knew, or should have known, about the leak. Further, the Tenant testified that the floor had always bubbled. I do not have sufficient evidence from the Landlord showing this was not the case. In the circumstances, I am not satisfied that there were visible signs of water damage in the unit such that the Tenants knew, or should have known, about the leak.

The Landlord submitted that there was mold in the window sills of the rental unit. The Landlord submitted two photos showing this. The mold in the photos looks like a mixture of dirt and mold. The mold is not such that one would expect the Tenants to know, or suspect, that there was a leak in the rental unit.

I note that one of the photos does show water damage to the subflooring of a room; however, there is no evidence provided that this water damage was visible to the Tenants.

I note that the witness letters refer to bubbling in the floor and a musty smell in the rental unit. Again, the Tenant acknowledged there was bubbling in the floor and said this was there previously. I do not find that a musty smell is sufficient to conclude that the Tenants knew, or should have known, about the leak.

I am not satisfied based on the evidence provided that the Tenants knew, or should have known, about the leak in the hot water tank. Therefore, I am not satisfied that the Tenants breached the *Act*. I do not find the Landlords are entitled to compensation for the loss that resulted from the leak.

I also note that the Landlord sought reimbursement for replacing the hot water tank. The Landlord did not submit that the Tenants caused the leak. The Landlord could not explain why a delay in finding the leak caused further damage to the hot water tank. I do not find that the Tenants breached the *Act* in this regard or that they are responsible for the cost of replacing the hot water tank.

Given the Landlords were not successful in their application, I decline to award the Landlords reimbursement for the filing fee.

Given the Tenants were successful in their application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, I find the Landlords owe the Tenants \$2,500.00. The Tenants are issued a Monetary Order in this amount.

Conclusion

The Landlords' Application is dismissed without leave to re-apply.

The Tenants' Application is granted and the Tenants are issued a Monetary Order in the amount of \$2,500.00. This Order must be served on the Landlords and, if the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and 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 *Act*.

Dated: November 27, 2018

Residential Tenancy Branch