



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FF

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Landlords filed under the *Residential Tenancy Act* (the “Act”), for a monetary order for damages or compensation under the Act, for permission to retain the security deposit, and for the return of their filing fee. The matter was set for a conference call.

The Landlords and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlords and the Tenants testified that they received each others documentary evidence that I have 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.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damages or losses due to the tenancy?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

Both parties testified that the tenancy began on December 1, 2017, as a six-month fixed term tenancy. Rent was in the amount of \$1,175.00 and was to be paid by the first day of each month. The Parties also agreed that at the outset of the tenancy, the Tenants paid a \$550.00 security deposit. Both parties agreed that the Tenants moved out of the rental unit at the end of the fixed term, on May 31, 2018, in accordance with their tenancy agreement. The Landlord provided a copy of the tenancy agreement and four-page addendum into documentary evidence.

The Landlord testified that they had not conducted the move-in inspection with the Tenants at the beginning of the tenancy. The Landlord testified that they had completed the move-in inspection report on their own. The Landlord provided a copy of the move-in inspection they conducted, on their own, into documentary evidence.

The Tenants agreed with the Landlord that the move-in inspection report was not completed in their presence at the beginning of the tenancy.

The Landlords testified that at the end of the tenancy, they had given the Tenants several opportunities to attend the move-out inspection. However, the Landlords testified that the Tenants never showed. The Landlords also testified that they served the Tenants with the final written request to attend the move-out inspection by email, with an inspection date of June 13, 2018, at 7:00 p.m. The Landlords testified that the Tenants did not show for the file attempt to conduct the move-out inspection, so they went ahead and did the inspection themselves. The Landlords submitted a copy of the Notice of Final Opportunity to Schedule a Condition Inspection, and a copy of their move-out inspection into documentary evidence.

The Tenants testified that they did attempt to conduct the move-out inspection with the Landlords, but the Landlords kept cancelling. The Tenants also testified that they did receive the Landlords' final request to schedule the move-out inspection and that they did attend the rental property on June 13 at 7:00 p.m., the time indicated on the notice. However, the Landlords did not show up. The Tenants provided a digital recording of them waiting out front of the rental property to conduct the move-out inspection into documentary evidence.

The Landlords testified that the Tenants damaged one of the tiles on the kitchen floor and that the entire kitchen floor needed to be replaced due to that damage, as they

could not just replace one tiles as the style was no longer available. The Landlords also testified that they had to replace the carpets in the rental unit due to stains caused by the Tenants. The Landlords testified that they had cleaned the carpets but that the stains would not come out. The Landlords submitted three pictures of the carpets and one of the kitchen tile and an invoice for their cost to replace the tile and carpets into documentary evidence. The Landlords are requesting \$8661.18 in the recovery of their costs to replace the flooring in the rental unit.

The Tenants testified that the tile in question had been broken before they moved in, that they had mentioned it to the Landlords and the Landlords had never fixed it. The Tenants testified that the crack in the kitchen tile had become more noticeable due to everyday use but that they had not broken it. The Tenants also testified that there were several stains on the carpets when they moved in and that overall the carpets were old and discoloured due to regular use. The Tenant testified that they had not damaged the carpets.

The Landlords testified that the Tenants had damaged the walls of the rental unit; that there were holes, scuff marks and dings in every wall of the rental unit caused by the Tenants. The Landlords testified that they spent \$2,100.00 to have the walls repaired and repainted. The Landlords submitted a copy of the invoice for their cost to have the walls repaired and repainted into documentary evidence.

The Tenants testified that they filled all of the nail holes in the walls before they left and that there were no major holes in any of the walls of the rental unit. The Tenants also testified that the rental unit was not freshly painted when they moved in and that there were many scuff marks and dings on the walls from before they took possession of the rental unit.

The Landlord testified that Tenants had damaged the blinds in the living room and on the patio door during the tenancy. The Landlords are asking to recover \$121.00 in replacement cost for the blinds and \$200.00 for installation costs. The Landlord submitted four pictures of the blinds and two copies of receipts for their costs to replace and install new blinds into documentary evidence.

The Tenants testified that the blinds provided by the Landlords at the beginning of their tenancy were old and in rough shape. The Tenants testified that they did not damage the blinds during their tenancy but that they are just old and worn out.

The Landlords testified that Tenants had damaged the fridge during the tenancy. The Landlords are asking for \$650.00 in compensation for the Tenants damage; comprised of \$150.00 for a broken crisper and \$500.00 for scratched to the door. The Landlords testified that they have not had the fridge repaired due to high costs and that the amount they are asking for is based on a verbal estimate they received. The Landlord submitted three pictures of the fridge into documentary evidence.

The Tenants testified that the fridge crisper was already cracked when they moved in and that the crack had just started getting bigger with normal use. The Tenants also testified that there had already been scratches on the fridge when they moved in. The Tenants testified that they did not damage the fridge during their tenancy.

The Landlords testified that Tenants had returned the rental unit to them with many of the light bulbs blown. The Landlords are asking for \$170.00, in the recovery of their costs for buying new light bulbs. The Landlords submitted three invoices into documentary evidence.

The Tenants testified that they had replaced the blown light bulbs before they moved out and that they had left several spare light bulbs in the rental unit for the Landlords. Additionally, the Tenants testified that the track lighting in the kitchen had a "short" in it that caused the light bulb in it too frequently bow, the Tenants stated that they had informed the Landlord of the malfunctioning light.

The Landlords testified that they were never informed of a problem with the kitchen light.

The Landlords testified that the covers on a hanging light fixture were missing at the end of tenancy and they are asking for \$80.00, to recover their costs to buy replacement covers for the hanging light fixture. The Landlords provide an invoice for the covers into documentary evidence.

The Tenants testified that they had removed the covers and put them in the closet during their tenancy, but that they were there when they left, all the Landlord needed to do was put them back on the light fixture.

The Landlords testified that the Lazy Susan was broken at the end of tenancy and they are asking for \$250.00, to recover their costs to have it repaired.

The Tenants testified that the Lazy Susan was cracked and broken at the beginning of the tenancy. The Tenants testified that they had massaged the Landlords about it, but that the Landlords had never fixed it. The Tenants testified that they did not damage the Lazy Susan during their tenancy.

The Landlords testified that the tub stoppers were broken at the end of tenancy and they are asking for \$70.00, to recover their costs to have them replaced.

The Tenants testified that the tub stoppers were broken at the beginning of the tenancy and that they did not damage the tub stoppers during their tenancy.

The Landlords testified that the two-bathroom door hooks had been removed and were missing at the end of the tenancy. The Landlords are asking for \$35.00, to recover their costs to have the boor hooks replaced.

The Tenants testified that the bathroom hooks were not missing, one was still in the door, and the other one had pulled out of the door due to use but was on the counter and just need to be re-installed.

The Landlords testified that the window screens had been damaged and their frames had been bent at the end of the tenancy. The Landlords testified that they were unable to replace them due to all the high costs they had already incurred with the other repairs to the rental unit but that they had received a verbal quote for their handyman for the cost of the repair. The Landlords are requesting \$650.00, to have the window screens repaired.

The Tenants testified that the window screens had been removed due the exterior windows being washed, and that they had difficulty in getting the re-installed but that the screens were not damaged they just need to be re-installed.

The Landlords testified that the rental unit had been returned to them unclean. The Landlords are requesting to recover the \$250.00 they spent to have the rental unit cleaned. The Landlords submitted a copy of the invoice for their cost for cleaning into documentary evidence.

The Tenants testified that they had cleaned the rental unit at the end of the tenancy and that there was no need for additional cleaning.

The Tenants testified that the bedroom door had been damaged during their tenancy and that they ordered and paid for a replacement door before they left. The Tenants testified that they had offered to deliver the door themselves but that the Landlord had refused and insisted on store delivery. The Tenants testified that they should not have to pay the Landlord's delivery cost as the Landlord chose the store delivery and refused their offer to deliver the door.

The Landlords testified that the door had been damaged and that the Tenants had ordered and paid for a new door. The Landlords are requesting \$22.40 in delivery costs they paid for the new door.

Analysis

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

I find that the parties entered into a six-month fixed term tenancy, beginning on December 1, 2017, in accordance with the *Act*.

I have reviewed the tenancy agreement, and attached addendum that the Landlords submitted into documentary evidence and I noted the agreement between these parties contained attempts to contract contrary to the legislation. Section 5 of the *Act* states the following:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I advised the Landlords, during the hearing, that any attempt to contract contrary to the legislation would be of no effect and would not be enforceable through these proceedings. Specifically, section 4(a) of the tenancy agreement where the Landlords attempted to pre-empt automatic deductions to the security deposit.

I accept the testimony of both parties that the move-in inspection had not been completed in accordance with the *Act* for this tenancy. Section 23 of the *Act* states the following:

Condition inspection: start of tenancy or new pet

23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

I find that the Landlords were in breach of section 23 of the *Act* when they did not ensure that the move-in inspection had been completed in accordance with the *Act*.

I also accept the testimony and video evidence provided by the Tenants, and I find that the Tenants did attend the rental unit at the scheduled time for the move-out inspection and that it was the Landlords who failed to attend at the scheduled time. Therefore, I find that the Landlords had also breached section 35 of the *Act* when they failed to complete the move-out inspection in accordance with the *Act*.

Consequences for tenant and landlord if report requirements not met

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequently, I find that the Landlords have extinguished their right to claim against the security deposits for this tenancy.

I have reviewed the Landlords' application for this hearing, and I find that the Landlords have made a claim against the deposit due to damages to the rental and that they have retained the security deposit pending the outcome of this hearing.

Return of security deposit and pet damage deposit

38 (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

As I have previously found that the Landlords had extinguished their right to claim against the deposits for damages, I find that the Landlords are in breach of the *Act* by holding on to the security deposit pending the results of their application.

Section 38(1) of the *Act* gives a landlord, 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the security deposit or repay the security deposit to the tenant. As the Landlords have extinguished their right to claim against the deposits, I find that the Landlords had until June 15, 2018, to comply with section 38(1) of the *Act* to repay the deposit in full to the Tenants, which they have not done.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (6)** If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenants are entitled to the return of double the security deposit, in the amount of \$1,100.00.

As for the Landlord claim for compensation due to damage, awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.”

In order for me to determine if the Tenants damaged the rental property during their tenancy, the Landlords need to prove the condition of the rental unit has changed during the tenancy.

The move-in/move-out inspection is the official document that represents the condition of the rental unit at the beginning and the end of a tenancy. However, in this case, it has already been determined that this document was not completed in accordance with the *Act*. Therefore, I will not consider the move-in/move-out inspection report submitted into

evidence by the Landlords in my decision. In the absence of that document, I must rely on verbal testimony regarding the condition of the rental unit at the beginning and the end of this tenancy.

Throughout the hearing, the parties to this dispute offered conflicting verbal testimony regarding the condition the rental unit at the beginning of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have carefully reviewed the documentary evidence provided into evidence by both parties, and I find that there is no evidence before me that shows the condition of the rental unit at the beginning of this tenancy. As there is no documentary evidence to outweigh the contradictory verbal testimony of the parties, in this case, I find that the Landlords have not provided sufficient evidence to prove that the condition of the rental unit had changed during this tenancy or that the Tenants had damaged the rental unit. Therefore, I dismiss the entirety of Landlords' claim for the recovery of their costs and for compensation due to damage to the rental unit.

As for the Landlords claim for the delivery cost of the door. I accept the agreed upon testimony of both parties, that the Tenants damaged the bedroom door and that the Tenants purchased a replacement door before the tenancy ended. I also accept the agreed upon testimony that the Landlords refused the Tenants request to deliver the new door themselves and instead request that the door is delivered by the company it was purchased from. I find that the Landlords did not act reasonably to minimize their damages or losses when they refused to allow the Tenants to deliver the new door. Therefore, I dismiss the Landlords' claim for the recovery of their costs for having the new bedroom door delivered.

Overall, I dismiss the Landlord's claim for compensation due to damage to the rental unit, in the amount of \$13,259.58.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have not been successful in their application, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for their application.

Conclusion

I dismiss the Landlords' claim without leave to reapply.

I find that the Landlords have breached section 38 of the *Act*, and I order the Landlord to return the doubled security deposit, in the amount of \$1,100.00 to the Tenants within 15 days of receiving this decision.

I grant the Tenants a conditional **Monetary Order** in the amount of **\$1,100.00**, to be served on the Landlords if they do not comply as ordered. The Tenants are provided with this Order in the above terms, and the Landlords must be served with this Order. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: November 23, 2018

Residential Tenancy Branch