



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL
 MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to applications from both parties under the *Residential Tenancy Act* (the “Act”). The Landlords applied for monetary compensation for damages against the security deposit. The Tenants applied for the return of the security deposit. Both parties also applied for the recovery of the filing fee paid for each Application for Dispute Resolution.

One of the Landlords and both Tenants were present for the duration of the teleconference hearing. The parties confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the other party’s application and a copy of the other party’s evidence. Neither party brought up any concerns regarding evidence and therefore I find that both parties were duly served as required by the *Residential Tenancy Branch Rules of Procedure* and the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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

Are the Landlords entitled to monetary compensation for damages?

Should the Landlords be allowed to retain the security deposit towards any compensation owed?

Are the Tenants entitled to the return of their security deposit?

Should either party be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on November 1, 2013 and ended on September 30, 2018. Monthly rent was \$1,400.00 and a security deposit of \$700.00 was paid at the outset of the tenancy. The parties confirmed that the Landlord is still in possession of the full security deposit amount. The tenancy agreement was submitted into evidence and confirms the tenancy details as stated by the parties.

The Landlord applied to retain the security deposit in the amount of \$700.00 towards the cost of repairs and cleaning in the rental unit after the tenancy ended. He stated that the rental unit was brand new at the start of the tenancy, as shown on the Condition Inspection Report at move-in which was signed on October 31, 2013. The Condition Inspection Report was submitted into evidence and states "brand new" throughout all areas of the rental unit at the time the Tenants moved in.

The Landlord testified that the Tenants agreed to pay \$200.00 for carpet cleaning, but that 1-2 hours of cleaning for the rest of the rental unit was also required. He also stated that the blinds were damaged on the back door of the rental unit due to the Tenants reaching through them to open the door. The Landlord stated that the estimated cost for repair of the blinds is \$150.00.

The Landlord stated that the glass stovetop required a special cleaner which was approximately \$20.00 and that filler for dents on the baseboards cost approximately \$10.00. The Landlord also noted that the unit requires painting in the amount of approximately \$800.00. The Landlord stated that they will pay for the painting that was

required due to wear and tear, but not for additional damage such as marks and dents on the walls and doors. The Landlord estimated that the Tenants should be responsible for approximately \$200.00 of the painting.

The Landlord also stated that there was damage to the oven hood, the dishwasher and a light fixture, all of which cost approximately \$50.00 to repair. The Landlord testified that not all of the repairs have been completed yet, but they are in progress. He also stated that the cost of cleaning and the repairs was more than \$700.00, but that he has only applied to keep the security deposit in this amount.

The Landlord submitted into evidence the Condition Inspection Report, the tenancy agreement, and quotes for cleaning and repairs. An email dated October 9, 2018 from a cleaning company states that the rental unit will likely require 2-2.5 hours of cleaning at \$110.00 per hour. An email dated October 5, 2018 from a blind company states that replacement of the blinds is estimated at \$150.00. The Landlord also included information from a painting company's website that outlines their costs for painting.

The Landlord submitted 7 photos into evidence which included the following: a photo of the stovetop, a photo of the blinds that the Landlord stated were damaged, a photo of a sticker on a wall, a photo showing blinds that the Landlord stated needed cleaning, a photo to show a dent in a baseboard, and two photos that the Landlord stated show damage to the walls. The Landlord also submitted one page with 11 photos which included a description of the damage or cleaning needed in each area shown in the photos.

The Landlord testified that his property manager participated in a move-out inspection on September 30, 2018 with the Tenants. He questioned why the property manager had checked off that everything was in good condition as when the Landlord attended the rental unit later, he noticed uncleanliness and damage in the rental unit. The Landlord submitted that he did not participate in the move-out inspection as he was not informed that it was happening with his property manager. However, he stated that he notified the Tenants right away after attending the rental unit and becoming aware of the issues.

The Landlord stated that the Tenants provided their forwarding address on the move-out inspection, but as he had not received a copy of this, he emailed the Tenants to request their new address. He received their forwarding address by email on October 14, 2018. The Landlord stated that he received a copy of the Condition Inspection Report from the property manager by email on October 10, 2018 but had not noticed at

the time that the Tenants' forwarding address had been provided on the inspection report.

The Tenants provided testimony that they both participated in the move-in and move-out inspections. They stated that they provide their forwarding address at the time of the move-out inspection on September 30, 2018.

The Tenants submitted that they agreed that the Landlord may withhold \$200.00 from the security deposit for carpet cleaning. They were not in agreement to any of the other claims of the Landlord and stated their belief that the damage claimed by the Landlord was normal wear and tear that occurred during a 5-year tenancy.

The Tenants also stated that the property manager attended the move-out inspection with them and completed the report that indicated no damage or any areas that needed cleaning. The Tenants stated that they took great care of the property and kept it in good condition. The Tenants stated that the Condition Inspection Report was signed off on September 30, 2018 and that the Landlord attended the rental unit at a later date and then advised them as to repairs and cleaning needed.

The Tenants have applied for \$1,200.00, which is the return of double their security deposit after deducting \$200.00 for carpet cleaning.

The Tenants submitted the Condition Inspection Reports into evidence as well as the tenancy agreement and an email from the property manager. The email, dated October 3, 2018 was originally from the Landlord noting damages and cleaning found to be needed upon inspection of the rental unit. In the email, the property manager includes a response to the Landlord's claims and notes that the majority of the claims are due to reasonable wear and tear and not the responsibility of the Tenants. In the email the property manager confirms that the Tenants agreed to pay \$200.00 for steam cleaning the carpets and that he would ask them about agreeing to pay \$50.00 towards cleaning.

Analysis

Regarding the Landlord's claims against the security deposit and the Tenants' claim for the return of the security deposit, I refer to Section 38(1) of the *Act* which states the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony and evidence of both parties, I find that the tenancy ended on September 30, 2018, the same day that the Tenants' forwarding address was provided in writing. Although the Landlord stated that he did not receive the forwarding address until October 14, 2018, I find that the property manager was acting as an agent of the Landlord and therefore had the authority to accept the Tenants' forwarding address. The forwarding address was provided on the Condition Inspection Report at move-out on September 30, 2018. As stated in the definitions of Section 1 of the *Act*, a landlord includes an agent who acts on behalf of the landlord or owner.

Although the property manager may not have provided the forwarding address to the Landlord until later, the Landlord's agent received the address on September 30, 2018. Therefore, I find that the Landlord had 15 days from this date to return the deposit or file a claim against the deposit. As the Landlord filed the Application for Dispute Resolution on October 9, 2018, he applied within the 15-day timeframe provided under the *Act*. As such, Section 38(6) does not apply, and the Tenants are not entitled to the return of double the security deposit.

As for the Landlord's claims for cleaning and repairs, I refer to Section 21 of the *Residential Tenancy Regulation* which states the following:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I accept the information on the Condition Inspection Report that was submitted into evidence by both parties. The move-out inspection conducted on September 30, 2018 notes no damage and no areas that require cleaning. The report is signed by both the Landlord's agent who was acting on behalf of the Landlord, and one of the Tenants. I also accept the email evidence submitted by the Tenants in which the Landlord's agent informs the Landlord that the damage appeared to be mostly normal wear and tear and therefore the responsibility of the Landlord. Should the Landlord not agree with the decision of their designated agent to sign off on the move-out inspection, that seems to be a matter between the Landlord and the agent, not between the Landlord and the Tenants.

Although the Landlord submitted some photos showing areas that needed cleaning or repairs, I do not find this to be a "preponderance of evidence" that the move-out Condition Inspection Report was not accurate. Instead, I find that the Landlords hired a property manager to act on their behalf, and the property manager determined that there was normal wear and tear in the rental unit, and that the Tenants would be responsible for paying for carpet cleaning. The report at move-out was conducted and signed by the Landlord's agent and the Tenants.

As such, I decline to award compensation to the Landlord and dismiss the Landlords' application, without leave to reapply. I find that the Tenants are entitled to the return of their security deposit, after \$200.00 is deducted for carpet cleaning as agreed upon. As stated, as the Landlord applied within 15 days, the Tenants are not entitled to the doubling of their security deposit.

As the Landlords were not successful in their application, I decline to award the recovery of the filing fee. As the Tenants were successful with their application, pursuant to Section 72 of the *Act*, I award the Tenants the recovery of the filing fee in the amount of \$100.00.

The Tenants are awarded a Monetary Order in the following amount:

Return of security deposit	\$700.00
Recovery of filing fee	\$100.00
<i>Less carpet cleaning</i>	<i>(\$200.00)</i>
Total owing to Tenants	\$600.00

Conclusion

The Landlords' application is dismissed, without leave to reapply.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$600.00** for the return of their security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Tenants are provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. 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: February 06, 2019

Residential Tenancy Branch