



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

The landlord and the tenants convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages to the unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order for money owed;
2. Return of double the security deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to double the security deposit?

Are the tenants entitled to monetary compensation for money owed?

Background and Evidence

The parties agreed that the tenancy began on April 15, 2018. Rent in the amount of \$1,800.00 was payable on the first of each month. The tenants paid a security deposit of \$900.00. The tenancy ended on April 29, 2019.

Landlord's application

The landlord claims as follows:

a.	Clean costs	\$ 360.00
b.	Painting	\$ 75.00
c.	Filing fee	\$ 100.00
	Total claimed	\$ 535.00

The parties agreed a move-in condition inspection report was completed. The landlord's agent stated that they conducted a move-out condition inspection with the tenant; however, the tenant was agitated and would not complete the report. The landlord's agent stated they completed the report in accordance with the Act. Filed in evidence is a copy of the condition inspection report.

The landlord's agent testified that the tenants did make efforts to clean the rental unit; however, it was not done well. The agent that the walls and baseboards were not cleaned. The stove and all around the stove was very sticky from what they believe was a layer of oil. The agent stated that that at the base of the toilet had hair and yellow marking and the tub had hair in it. The agent stated that the windows and window sills were not cleaned. The agent stated that they paid to have the rental unit cleaned and seek to recover the cost of cleaning in the amount of \$360.00. Filed in evidence is a receipt.

The tenant testified that that they cleaned the unit and did not complete the move-out condition inspection report because they want more time to clean the unit. The tenant stated that the landlord would not agree to complete a second inspection.

The tenant testified that some of the photographs are not that of their rental unit; but most of the photographs are.

The landlord's agent argued that the tenant booked the move-out inspection for April 29, 2019, and returned the keys. The agent stated that it was the tenant that originally said

they were not available to do the inspection on the 30th due to work. The agent stated that they are under no obligation to arrange a second inspection as it was scheduled to be done on this date. The agent stated that the tenants had actually vacated the rental unit on April 8, 2019.

The landlord's agent argued that the photographs are all from the tenants' rental unit.

Tenants' application

The tenants claim as follows:

a.	Double the security deposit	\$1,800.00
b.	Return of prorated rent for April	\$ 120.00
c.	Filing fee	\$ 100.00
	Total claimed	\$2,020.00

The parties agreed that the landlord received the tenants' forward address on May 1, 2019.

The tenants testified that the landlord did not return the security deposit within 15 days of the tenancy ending. The tenants stated that they are entitled to double the security deposit in the amount of \$1,800.00.

The landlord's agent testified that they made their application claiming against the security deposit on May 13, 2019, which was within 15 days of the tenancy ending.

The tenant testified that they vacated the rental unit on April 29, 2019. The tenant stated that they were forced out and should be entitled to recover the one day that they did not have possession of the rental unit.

The landlord's agent testified that it was the tenant that arranged the move-out inspection and returned the keys on April 29, 2019 as they had not been living in the premises since April 8, 2019.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

Section 21 of the Regulations states a condition inspection report completed in accordance with this section 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.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the landlord's agent conducted a move-out condition inspection report with the tenant. The tenant did not complete the report in accordance with the Act, as they did not agree or disagree with the report, which they had the opportunity to do so and the tenant did not sign the report. I find the landlord completed the report in accordance

with the Act. Therefore, I find the condition inspection report is evidence of the state of the condition at the end of the tenancy.

I find the onus is on the tenant to provide a preponderance of evidence to the contrary, as they had the opportunity at the in the move-out inspection to state otherwise.

The evidence of the tenant was they believe the rental unit was clean; however, I find that does not meet the requirements of a preponderance of evidence. Therefore, I accept the move-out condition inspection report as to the condition of the rental unit.

The move-out condition report indicates that the walls need cleaning, in multiple areas of the rental unit; the cabinets needed cleaning in multiple areas of the rental unit; the bathroom fixtures needed cleaning; the stove and dryer needed cleaning; and the bedroom window was sticky.

I find the tenants failed to leave the rental unit reasonable clean. I find the amount claimed reasonable and is supported by a receipt. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$360.00**.

The landlord claim included the cost of painting; however, no evidence was given on this portion of their claim. Therefore, I dismiss this portion of their claim without leave to reapply.

I find that the landlord has established a total monetary claim of **\$460.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord to retain the above amount from the security deposit of **\$900.00** full satisfaction of the claim.

Tenants' application

Return of security deposit and pet damage deposit

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.**

The parties agreed that the landlord received the tenants' forwarding address on May 1, 2019. The landlord filed an application claiming against the security deposit on May 13, 2019. I find the landlord made their application within the statutory time limit. I find the doubling provisions under section 38(6) of the Act do not apply. Therefore, I dismiss the tenants' application for return of double the security deposit.

In this matter the tenants are claiming the return of rent for one day. I do not accept the evidence of the tenant that they were forced out. The date of the inspection was arranged by the tenants and the tenants had not been living in the rental unit since April 8, 2019.

Further, I find there is not provisions under the Act that would entitled the tenants the return of prorated rent, other than section 49 of the Act, which does not apply to this matter. Therefore, I dismiss this portion of the tenants' application without leave.

As the tenants were not successful with any portion of their claim, I decline to award the tenants the cost of the filing fee.

In this case, I am satisfied that the tenant participated in the move-out condition report. However, the tenant did not sign the report or indicate whether they agreed or disagreed with the report as required by the Act. The report was completed by the landlord in accordance with the Act and I have found report the report is evidence of the stated of the rental unit at the end of the tenancy. Therefore, I have not applied the extinguishment provision of the Act.

As I have found the landlord is entitled to retain the amount of **\$460.00** from the security deposit, I find the tenants are entitled to the balance due of **\$440.00**. I grant the tenants an order under section 67 of the Act for the balance due of their security deposit.

Conclusion

The landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim and the tenants are granted a formal order for the balance due of their deposit. The tenants' application is dismissed.

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: August 21, 2019

Residential Tenancy Branch