



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD, FFL, MNDL-S, MNRL-S

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$675 for the return of the security deposit.
- b. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$3040 for unpaid rent and damages
- b. An order to retain the security deposit
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by each party was sufficiently served on the other by mailing, by registered mail to where the other party resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenants are entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on August 29, 2018 and end on July 31, 2019. The rent is \$1350 per month payable on the last day of the month before the rental payment period. The tenants paid a security deposit of \$675

at the start of the tenancy. The tenancy agreement also contained a clause that provided for the payment of \$400 a month or \$100 per week or \$15 per day for an additional occupant. "Occupant" is defined as anyone living there longer than 7 days.

The tenancy ended on July 31, 2019. The parties conducted a Condition Inspection at that time. The tenants agreed in the Condition Inspection Report that the landlord could retain the security deposit. .

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to the sum of \$682.50 for the cost of patching and painting the walls, repairing the damaged carpet, repair the bathtub and removing the mattress and chairs to the landfill. I accept the evidence provided by the landlord in the form of an invoice from the contractor who did the work, a cheque payable to the contractor, photographs and the Condition Inspection Report that shows the pre-tenancy and post-tenancy condition of the rental unit. I do not accept the tenant's submission that this amounts to reasonable wear and tear.
- b. I dismissed the claim of the landlord for the cost of carpet cleaning. I accept the testimony of the tenant's that they carpet cleaned the rental unit prior to leaving. They also provided an invoice and receipt to supporting this claim.
- c. I dismissed the landlord's claim of \$2200 for additional rent allegedly because one of the tenant's boyfriend lived in the rental unit and thus was an additional occupant for the following reasons:
 - The tenant and boyfriend acknowledged that he slept over from time to time but did not reside in the rental unit. I accept the written statements of the boyfriend, his landlord, his co tenant and a neighbor that he had a residence elsewhere and that he lived in the other residence. I determined the landlord failed to prove the allegation that the tenant was living in the rental unit.
 - The landlord failed to provide precise evidence as to exactly what dates he was living there. The landlord alleged he was there 99% of the time. This statement is not supported by the evidence. The tenant produced a statement from her

sister that she lived there for the month of September 2018 and paid the landlord \$400 as an additional occupant but that the boyfriend was not living there at the time.

- I determined the clause which requires an additional sum of \$400 per month for an additional occupant as defined by someone living there longer than 7 days is in conflict with the Residential Tenancy Act which permits a tenant to have guests. The clause is unenforceable as it conflicts with the Act.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$682.50 plus the \$100 filing fee for a total of \$782.50.

Security Deposit

I determined the security deposit plus interest totals the sum of \$675. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$107.50.

Tenant's Application:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

I ordered that the application of the tenants for the return of their security deposit and to recover the cost of the filing fee be dismissed for the following reasons:

- The tenants agreed in writing on the Post Tenancy Condition Inspection that the landlord could keep the security deposit.
- The landlord's claim exceeds the amount of the security deposit. I have ordered that the landlord shall retain the security deposit in partial satisfaction of the landlord's claim against the tenants.

Conclusion:

I ordered that the landlord shall retain the security deposit of \$675. In addition I ordered that the Tenants pay to the landlord the sum of \$107.50. I ordered that the tenants' application to keep the security deposit and to recover the cost of the filing fee be dismissed without leave to re-apply.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: December 12, 2019

Residential Tenancy Branch