



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL
 MNSDB-DR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on August 24, 2020. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee.

The Tenants’ Application for Dispute Resolution was made on May 15, 2018. The Tenants applied for the return of their security deposit and the return of their filing fee.

Both the Landlord and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all evidence and testimony 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 losses under the *Act*?
- Are the Landlords entitled to retain the security deposit for this tenancy?
- Are the Landlords entitled to recover the cost of the filing fee?

- Are the Tenants entitled to recover their security and pet damage deposits under the *Act*?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The testimony of both parties confirmed that the tenancy began on August 1, 2019, as a one-year fixed term tenancy. Rent in the amount of \$1,825.00 was due each month, and the Tenants paid the Landlord a \$900.00 security deposit and a \$300.00 pet damage deposit (the "Deposits").

The parties agreed that this tenancy ended on August 2, 2020, the date the Tenants moved out of the rental unit, returned the keys, and the end of tenancy inspection was completed. The parties also agreed that the Tenants agreed to a \$200.00 deduction to the security deposit to cover the strata move-out fee. The Landlord submitted a copy of the move-in/move-out inspection report (the "Inspection Report") into documentary evidence. The parties agreed that there is a \$700.00 security deposit and \$300.00 pet damage deposit that remains in dispute for this tenancy.

The parties agreed that five light bulbs had been blown at the end of this tenancy and had not been replaced by the Tenants. The parties also agreed that there was some damage to the walls of the rental unit that required repair at the end of this tenancy. The Landlords are requesting the recovery of their costs for the repairs in the amount of \$16.00 in light bulbs and \$21.84 in supplies to repair the walls. The Tenants agreed to these costs during these proceedings.

The Landlord testified that at the end of this tenancy, there were three broken stove knobs that had to be replaced. The Landlords testified that they believe that the Tenants were aggressive in their use of the stove which lead to the knobs breaking. The Landlords are requesting the recovery of their costs to replace the broken stove knobs in the amount of \$189.44. The Landlords submitted a receipt for the purchase of new stove knobs into documentary evidence.

When asked by this Arbitrator, the Landlords testified that the stove was purchased in March 2016 and that the replacement stove knobs could only be purchased in a five-pack.

The Tenants testified that they used the stove properly, that they were not aggressive when using the stove and that they in no way damaged the stove. The Tenants argued that this model of stove was known for the knobs breaking. The tenant submitted three online reviews of the stove into documentary evidence.

The Landlord testified that they did not believe that the online reviews were for the model of stove they have in the rental unit.

The Landlord testified that the Tenants returned the rental unit to them uncleaned and that they are requesting to recover their costs to have the rental unit cleaned at the end of the tenancy, in the amount of \$204.75. The Landlords submitted a receipt of the cleaning cost as well as 20 pictures taken of the rental unit on August 2, 2020, into documentary evidence.

The Tenants testified that they did not have time to cleaning the entire rental unit at the end of the tenancy but that they unit was reasonably clean.

The Tenants testified that they attempted to negotiate with the Landlords to prevent this matter from going to a hearing, but that the Landlords would not budge from their requested amount of \$800.00 for repairs and cleaning, and that the Tenants believed that was too high.

The Landlords agreed that they attempted to negotiate the cost for repairs and cleaning but that it had been unsuccessful.

Analysis

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

I accept the agreed-upon testimony of these parties that this tenancy ended on August 2, 2020, and that these parties agreed on the Landlords keeping \$200.00 of the security deposit for this tenancy to cover a strata move-out fee. I find that there is a \$1,000.00 deposit remains in dispute for this tenancy, compromises of a \$700.00 security deposit and \$300.00 pet damage deposit.

The Landlord is claiming for 432.03 in damages and cleaning for the rental unit at the end of the tenancy, consisting of \$16.00 for light bulbs, \$21.84 in supplies to repair dents in the walls, \$189.44 for stove knob replacement and \$204.75 in cleaning.

The during these proceedings, the Tenant, agreed that they returned the rental unit to the Landlords with damaged walls, that required repair and with five blown lightbulbs. As the Tenants agreed to these damages, I find it appropriate to award the Landlords their requested amounts of \$16.00 for light bulbs, \$21.84 in supplies to repair dents in the walls.

As for the Landlords' request for \$189.44 to replace broken stove knobs, I accept the agreed-upon testimony of these parties that the stove knobs had been broken during this tenancy. However, during the hearing, the parties offered conflicting verbal testimony regarding the cause of the stove knob damage. 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 reviewed the totality of the Landlords' testimony and documentary evidence, and I find that they have not provided sufficient evidence to show that the Tenants, intentionally broke or thorough willful neglect or negligence caused the knobs on the stove to break. It is insufficient of a landlord to merely assume that because something broke down during a tenancy that it is the Tenant's financial responsibility repair. Pursuant to section 32 (3) of the Act, a tenant is only responsible for the damage they cause to a rental unit, stating the following:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a)complies with the health, safety and housing standards required by law, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit 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.

- (4) A tenant is not required to make repairs for reasonable wear and tear.*
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

Overall, I find that the Landlord has bit proven their entitlement to the recovery of their costs to replace stove knobs at the end of this tenancy. Consequently, I dismiss this portion of the Landlord's claim.

Finally, the Landlords have also claimed for \$204.75 in cleaning cost due to the rental unit not being fully cleaned at the end of this tenancy. Pursuant to section 37(2) of the Act, a tenant is responsible for returning the rental unit reasonably cleaned at the end of their tenancy.

Leaving the rental unit at the end of a tenancy

- 37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.***
- (2) When a tenant vacates a rental unit, the tenant must***
 - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and***
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.***

I have reviewed the inspection report and the pictures of the rental submitted into evidence, and I find that the Tenants did return the rental unit to the Landlords in an uncleaned state at the end of this tenancy. Consequently, I find that the Landlords have established an entitlement to recover the full costs associated with cleaning the rental unit at the end of this tenancy. I award the Landlord the recovery of the \$204.75 they spent to have the rental unit cleaned.

In the Landlord's claim, I grant them an award of \$242.59, comprised of \$16.00 for light bulbs, \$21.84 in supplies, and \$204.75 for cleaning. The Landlords are granted permission to retain \$242.59 from the deposits they are holding for this tenancy in full satisfaction of this award.

I order that the Landlords return the remaining \$757.41 of the deposits they are holding for this tenancy to the Tenants.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. In this case, both parties have requested the recovery of their filing fee for these proceedings. Normally, the unsuccessful party to a proceeding will bear the hearing's cost; however, in this case, I find that both these parties have only been partially successful in their claims. In the absence of a single successful party to a hearing, I will turn my decision towards which party took reasonable steps to mitigate the need for these proceedings.

After reviewing the totality of the evidence and testimony of these proceedings, I find that the Landlords were unreasonable on two accounts, leading to the requirement for this hearing. First, in the failed attempt to negotiate a settlement between these parties at the end of this tenancy. On this account, I accept the Tenants' testimony that the Landlord requested to retain \$800.00 of their deposits to cover the cost of cleaning and repairs to the rental unit, and that the Tenants' refusal of that offer lead to these proceedings. As the Landlord application before me in these proceedings was only for \$432.03, I find that the Landlords' offer of \$800.00 to resolve this matter outside of a hearing to have been unreasonable.

Secondly, I find that the Landlords were unreasonable when they retained the full \$1,000.00 disputed deposits for this tenancy pending the outcome when they only claimed for \$432.03. I find that it would have been reasonable of these Landlords to at least return the position they were not claiming against pending the results of these proceedings.

Overall, I find that the unreasonable actions of the Landlord lead to the necessity for both the Landlords' and the Tenants' application that I have before me. Consequently, I find that the Landlords are responsible for the costs associated with these proceedings.

Therefore, I award the Tenants the recovery of their filing fee of \$100.00 that they paid for their application.

Pursuant to sections 38 and 72 of the Act, I grant the Tenants a Monetary Order in the amount of \$857.41, comprised of the return of their \$700.00 security deposit, their \$300.00 pet damage deposit, and the \$100.00 recovery of their filing fee, less the \$242.59 awarded to the Landlords in this decision.

Conclusion

I find for the Tenants under sections 38 and 72 of the *Act* and grant the Tenants a **Monetary Order** in the amount of **\$857.41**. 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: November 27, 2020

Residential Tenancy Branch