



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDL-S, FFL

Tenants: MNSDS-DR, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- \$250.00 compensation for damage caused by the tenant, their pets or guests to the unit, site or property – holding the security deposit for this claim; and
- recovery of his \$100.00 application filing fee.

The Tenants filed a claim for:

- the return of the security deposit in the amount of \$650.00; and
- recovery of their \$100.00 application filing fee;

The Tenants, J.C. and M.C., and the Landlord, N.L.P. appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary Matters

The Parties provided their email addresses in their applications, and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

I asked the Tenants about the Parties named in their application, and they said that the two in attendance were the parents, and the other two were their children. As such, I amended the Tenants' name in their application to the parents, only, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on January 1, 2019 and ran to December 31, 2019, and then operated on a month-to-month basis. They agreed that the Tenants paid the Landlord a monthly rent of \$1,300.00, due on the first day of each month, and that the Tenants paid the Landlord a security deposit of \$650.00, and no pet damage deposit.

The Parties agreed that they did not inspect the condition of the rental unit or prepare a condition inspection report ("CIR") at the start of the tenancy, with which to use for comparison at the end of the tenancy. They agreed that the tenancy ended on July 31, 2020, and that the Tenants provided the Landlord with their forwarding address in writing by a registered mail dated September 2, 2020. The Landlord said he thought he did not receive this package until approximately September 26 or 27.

The Tenants submitted a copy of a completed form RTB-41: "Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit". This form was signed and dated by the Tenant and indicated that the Tenants sent their forwarding address to the Landlord via registered mail on September 2, 2020.

LANDLORD'S CLAIMS

The Landlord applied for \$250.00 in compensation from the Tenants for damage to the rental unit; however, the invoices the Landlord submitted amounted to more than the total amount claimed in the Landlord's application. When I asked the Landlord about this in the hearing, he said that he is only claiming \$250.00, regardless of his invoices.

The Landlord said that the Tenant broke two tenancy rules. He said:

First, [the Tenant] changed the lock, and it's mentioned in the contract that neither can do that.

Second, when we signed the contract, I said no pets allowed, so he hid the pet inside our heat system cabinet. So, I got to know after two or three months in, when I had to change the heat appliance. There was some sound, so I asked him to open the door. I thought something was wrong – a bad smell was coming through. When he opened door, the pet was hiding inside the very warm place. So, the smell went through the whole house. I reminded him that the rule is no pets allowed, but he was hiding one. He said this is . . .the smell comes from their food - bugs that this dragon eats - so the whole house had to be cleaned. I sent a photo - this whole mess was here.

The Tenant said:

First of all, when we moved in, all the door locks were broken. [The Landlord] said they have no locks, but who wants to sleep in a place without a door lock? My brother had a spare lock in his car, and he gave it to me and installed it. He works in the industry.

I was not claiming to have no pets – just dogs and cats aren't allowed; I don't have them. My pet is enclosed in an aquarium. It didn't make a mess on the floor.

The tenancy agreement states that a pet damage deposit is not applicable, but I was not directed to a clause stating that the Tenant is not allowed to have pets. The only section specifically identified as "PETS" states:

Any term in this tenancy agreement that prohibits, or restricts the size of a pet or that governs the tenant's obligations regarding keeping of a pet on the residential property is subject to the rights and restrictions under the *Guide Dog and Service Dog Act*.

Further, a clause was checked on the last page of the tenancy agreement stating that there were no addendums.

The Landlord continued:

The blind tore off. I uploaded a photo to show it's damaged. I had to replace it by curtains - replace the old blinds. Plus, a window screen is missing – how did they lose it? We reminded them that no screen was missing when they moved into the rental unit.

All cabinets was new – 10 days before them moved in. The counter tops when they just moved in. Whole unit was upgraded 10 days before they moved in. When they moved in, I had a contract with the guy to remove the bathroom counter top. He did that while they were there.

There was damage above the counter; when they put the cable for their telephone and TV and wifi, they make a big hole there. See top of kitchen counter photo.

The main claim is the blinds were all broken, and I replaced them with curtains, because they are cheaper than blinds.

The floor was badly damaged, because it was scratched by kids or pets, I have no idea. The middle of the living room has come off, and I asked what are you doing? He said it sometimes comes off. I didn't claim it in the application.

The Tenant said:

I cleaned the whole house, except for the master bedroom. When I moved in, the house was full of holes. I agreed to paint it myself; I painted, mudded, and sanded, even when I moved it out it was still good.

Flooring – I sent some pictures – there were gaps in the floor, and I already told him that there are scuffs in the floor. Whenever my son was playing it was already scuffs. Already an old one. Gaps in the floor, because not enough spacing in the flooring, so there's the gaps; whenever you walk on the floor it's moving. You can see from pictures and the condition of the house – really bad condition when we moved in. I helped them out, because whenever I asked for anything, I did it myself.

The blinds when we moved in – all over the house were already broken. We changed the master bedroom with the good blinds. I showed to them how bad it is; this blind they claimed we broke was already broken, so I taped it and put up curtains. I cannot believe everything he's accusing me.

I wasn't hiding the pets; why an eviction notice? When we signed the contract, he said as long as not a dog or a cat. I guaranteed my pet is in an aquarium. Things went so fast, I'm living there for 17 months, no problems coming from them. I'm trying to be a good tenant. I changed the lock and painted the whole house for free. They removed the light at the front porch, and I bought a solar light, because I got home so late in the night

I always repaired problems in the sink. I fixed the faucet. The bathtub - I patched the holes in the bathtub, and I sent all the pictures. Under the sink in washroom, a big hole - bugs, rats, you name it - all coming out from there. Go to the living room, kitchen, a big hole, but I just let it slide. I can't accept that they accused me of stealing the screen, as well. It's so painful for me. We didn't have any problem with previous landlord. I painted the holes I did, so it's so painful for me to be accused of these things.

The Landlord said:

He's totally lying about the broken lock and about the flooring, he's pointing out the joint and you can see my flooring, so I totally disagree.

There was a dog also, but he didn't say anything about that dog.

The Tenant said: "A guest brought a dog - they bring a dog in a carrier, so how can I help that?"

TENANTS' CLAIMS

The Tenants seek the return of their \$650.00 security deposit from the Landlord. They said:

It's August 20 when I went to get the security deposit back. Why would I take only \$300.00? When left July 31, I texted his sister-in-law and his wife to check the place, and they said everything is fine, everything was awesome. I painted everything in the house, except the master bedroom, except that it was clean. I

sent everything to them.

It's so unbelievable for me that we got no amount of the security deposit back. He was lying when he said he gave me \$400.00. He was treating me like a dog.

The Landlord said:

He is lying. I said I am deducting \$150.00; he threatened RTB with me. I took money back from his daughter and said you can go to RTB. I gave them \$400.00 and they started threatening me. I took back that \$400.00.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I would be analyzing the evidence presented to me. I said a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In your case, each Party, as applicant, must prove:

1. That the other Party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the you to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the you did what was reasonable to minimize the damage or loss.

("Test")

LANDLORD'S CLAIMS

A condition inspection report is a means by which parties can determine the condition of the rental unit at the start of the tenancy, compared to that at the end of the tenancy. In this case, the Parties agreed that they did not conduct an inspection of the rental unit at the start of the tenancy. Further, while the Landlord has provided photographs of the rental unit at the end of the tenancy, he did not provide any photographs or any other documentary evidence of the condition of the rental unit at the start of the tenancy. I have only the Landlord's statements that it had been renovated "10 days" before the

tenancy started, which I find to be insufficient evidence on its own. This is contrasted with the Tenants' evidence that the residential property was not in the pristine condition that the Landlord implies it was. Based on the evidence before me overall, I, therefore, find that the Landlord has failed to provide sufficient evidence for determining what damage can be attributed to these tenants during their 18-month tenancy.

Given this finding, and the Landlord's assertion that he is only claiming \$250.00 from the Tenants, despite the other amounts claimed, I find that the Landlord has provided insufficient evidence to substantiate the merits of his application for \$250.00 from the Tenants. I, therefore, dismiss the Landlord's application wholly without leave to reapply.

TENANTS' CLAIMS

I find that the Tenants provided their forwarding address to the Landlord in writing by registered mail sent on September 2, 2020. The Landlord was uncertain about when he received it, therefore, I find it was deemed served on the Landlord on September 7, 2020, pursuant to section 90 of the Act. I find that the tenancy ended on July 31, 2020.

Section 38(1) of the Act states the following about the connection between these dates and the security 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.

Pursuant to section 38(1), the Landlord was required to return the \$650.00 security deposit to the Tenants within fifteen days after September 7, 2020, namely by September 22, 2020, or to apply for dispute resolution to claim against the security

deposit. The Landlord provided no evidence that he returned any amount; however, RTB records indicate that the Landlord applied for dispute resolution to claim against the deposit on August 30, 2020. Therefore, I find the Landlord complied with his obligations under section 38(1).

However, as the Landlord's claims are unsuccessful, I find the Landlord is obliged to now return the Tenant's \$650.00 security deposit in full. As such, I award the Tenants with **\$650.00** from the Landlord, pursuant to sections 38 and 67 of the Act. I also award the Tenant recovery of their **\$100.00** Application filing fee, pursuant to section 72. I grant the Tenants a Monetary Order of **\$750.00** from the Landlord.

Conclusion

The Landlord is unsuccessful in his application, as he provided insufficient evidence to support his burden of proof on a balance of probabilities. His application is wholly dismissed without leave to reapply.

The Tenants are successful in their application for the return of their \$650.00 security deposit, and for recovery of their \$100.00 application filing fee from the Landlord. I grant the Tenants a monetary order of **\$750.00** from the Landlord for these awards.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 23, 2020

Residential Tenancy Branch