



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On September 5, 2020 the Tenants applied for the return of a security deposit and to recover the cost of the filing fee.

On October 5, 2020 the Landlord applied requesting a monetary order for damage to the unit, and to recover the cost of the filing fee.

The matters were set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me.

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

- Is the Landlord entitled to compensation due to damage/ cleaning to the rental unit?
- Are the Tenants entitled to the return of a security deposit?

Background and Evidence

The parties testified that the tenancy began in August 2017 and was on a month to month basis. Rent in the amount of \$1,000.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid a security deposit of \$475.00 to the Landlord.

The Landlord and Tenant testified that the tenancy ended at the end of August 2020.

Landlord's Application

The Landlord is holding a \$300.00 security deposit and is seeking to keep the \$300.00 towards cleaning costs and the cost to replace a doorknob.

The Landlord testified that the rental unit was left unclean. She testified that the stove burners and other areas of the rental unit were left unclean. She testified that the exterior of the rental unit also required attention. She testified that she spent 10 hours cleaning the rental unit and is charging \$25.00 per hour the cleaning.

The Landlord testified that there was no condition inspection of the rental unit completed at the start or end of the tenancy.

The Landlord provided copies of emails sent to the Tenant including an email dated September 10, 2020 where the Landlord provides an explanation to the Tenant on what needed to be cleaned after the Tenant moved out. The Landlord did not provide any photographs of the rental unit in her documentary evidence.

In reply, the Tenant testified that she spent three solid days cleaning the rental unit.

The Tenant testified that the stove is a gas stove which she used for the three years of the tenancy. The Tenant testified that the heat from the flame will cause damage or normal wear and tear to the paint around the burner. The Tenant provided 84 photographs showing the interior of the rental unit.

The Tenant testified that her movers left a few things behind in the unit which the Tenant later removed and took to the dump. The Tenant testified that the residential property contains two separate self-contained rental units and maintenance of the yard was not a term or condition of her tenancy agreement. The Tenant testified that the Landlord did not prepare a written tenancy agreement.

The Tenant testified that she is only in agreement to compensate the Landlord for the doorknob and cost of paint for the stove. A receipt in the Tenants' documentary evidence indicates that the Landlord paid \$21.49 for a doorknob and \$13.32 for paint.

Tenants' Application

Security Deposit

The Tenants are seeking the return of the \$475.00 security deposit.

The Tenant testified that their forwarding address was provided to the Landlord on September 14, 2020 using email sent to the Landlord and also within the Tenants' documentary evidence served to the Landlord in September 2020. The Tenant stated that she used the Landlord's email address that was regularly used to communicate tenancy matters. The Tenant stated that the Landlord received the forwarding address because she responded to the Tenants email on September 18, 2020.

The Tenant testified that there was no written agreement that permitted the Landlord to withhold any amount of the security deposit. The Tenant testified that the Landlord has not returned any amount of the security deposit.

In reply, the Landlord testified that she received the Tenants forwarding address in September when she received the Notice of Dispute Resolution Proceeding from the Tenant.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Residential Tenancy Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises is intended to help the parties to an application understand issues that are likely to be relevant and may also help parties know what information or evidence is likely to assist them in supporting their position. The policy guideline provides that a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. A tenant is not responsible for reasonable wear and tear to the rental unit or site.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

Landlord's Claim

The Landlord failed to conduct a move in inspection of the rental unit at the start of the tenancy which would be proof of the state of repair or condition of the rental unit at the start of the tenancy. The Landlord did not provide any other documentary evidence, such as photographs to establish the condition of the unit at the start or end of the tenancy. The Tenant testified that the rental unit was left clean and provided photographs in support of her testimony.

I find that the Landlord has not provided sufficient evidence to prove that the Tenant is responsible for the cost for additional cleaning to the unit at the end of the tenancy.

Since the Tenant agreed at the hearing to compensate the Landlord for the doorknob and paint, I award these costs to the Landlord.

I award the Landlord \$34.81 for the purchase of a doorknob and paint.

Tenants' Claim

The Tenants are seeking the return of the security deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off provides:

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the

tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

The Guideline also provides that the right of a Landlord to obtain the Tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required; and/or*
- *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*

I find that the tenancy ended on August 31, 2020 and the Landlord received the Tenants' forwarding address as of September 18, 2020 when the Landlord responded to the Tenants' email.

I find that there was no written agreement that permitted the Landlord to keep an amount of the security deposit.

I find that the Landlord was required to repay the security deposit to the Tenants or make a claim against it by applying for dispute resolution within 15 days of September 18, 2020. The Landlord applied for dispute resolution on October 5, 2020. Within the Landlord's application for dispute resolution, the Landlord selected "no" to the question of whether they want to apply the security deposit to the monetary claim. I find that the Landlord failed to deal with the security deposit in accordance with section 38 of the Act.

Pursuant to section 38 (6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit. I award the Tenants \$950.00 which is double the amount of the \$475.00 security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since both parties had some success, I decline to order each party to repay the \$100.00 fee that they paid to make application for dispute resolution.

Set Off of Claims

The Landlord is awarded the amount of \$34.81.

The Tenants are awarded the amount of \$950.00 for the return of double the security deposit.

After setting off the amount of the awards, I grant the Tenants a monetary order in the amount of \$915.19. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement is recoverable from the Landlord.

Conclusion

The Landlord was partially successful with her claims for damage to the rental unit and cleaning costs.

The Tenants were successful with their claim for the return of double the security deposit.

After setting off the amounts owed by each party, I grant the Tenants a monetary order in the amount of \$915.19. This monetary order must be served on the Landlord and may be enforced in Provincial 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: January 27, 2021

Residential Tenancy Branch