



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC MNSD FF
Tenants: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 19, 2021. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlords attended the hearing. However, the Tenants did not. The Landlords stated they sent their Notice of Dispute Resolution proceeding and evidence by registered mail on March 11, 2021. Registered mail tracking information was provided. This package was mailed to the address the Tenants’ gave as their forwarding address. Pursuant to section 89 and 90 of the Act, I find the Tenants are deemed served with the above noted package 5 days after it was sent. This Notice of Hearing package was relating to the Landlord’s first application, which was filed in December 2020.

The Landlords stated that they want to withdraw their second application, filed in March 2021, as they filed this in error. The Landlords stated the amounts on the second application were incorrect. The Landlords stated this is their first time proceeding with this type of application. I hereby allow the Landlords to withdraw their second application, and to only proceed with the first application, noted above.

Since the Tenants did not attend the hearing, their application is dismissed, in full, without leave.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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.

Issue(s) to be Decided

- Are the Landlords entitled to compensation for money owed or damage or loss under the Act?
- Are the Landlords entitled to keep the security deposit to offset the amounts owed by the Tenants?

Background and Evidence

During the hearing, the Landlords testified that the Tenant moved into the rental unit on July 1, 2020, and moved out of the rental unit on November 30, 2020. The Landlords stated that monthly rent was set at \$2,399.00 and was due on the first of the month. The Landlords stated they initially held a \$1,200.00 security deposit, but at the end of the tenancy, they agreed with the Tenants, in writing, that they could retain \$150.00 from the Tenants' deposit to offset utility amounts owed. The Landlords stated that, currently, this means they only hold \$1,050.00 in security deposits, after deducting the authorized amount.

The Landlords acknowledged that they did not complete a move-in or move-out condition inspection report, as they were unaware they had to. The Landlords stated that they took some photos at the start of the tenancy, and some at the end. These photos were provided into evidence. The Landlords stated that they bought this house, brand new, in August of 2019, and everything in the house was brand new as of that time. At the end of the tenancy, nothing was more than 18 months old, and the house was in immaculate condition at the start of the tenancy.

The Landlord is seeking the following 4 items, as per the "repair invoice" document:

- 1) \$1,000.00 – Interior Painting

The Landlords stated that they paid this amount to have the entire unit repainted. The Landlords stated that this house is a 4-bedroom home, with 3 washrooms, and most all the rooms needed repainting because of the numerous deep scratches and marks on the walls. The Landlords stated they hired a contractor to do the work. Photos of the wall damage, and the marks on the wall were provided into evidence. The Landlord provided photos of before and after the tenancy.

2) \$700.00 – Stair Carpet Damage

The Landlords provided photos showing the excessive wear and tear on the carpeted stairs in the house. The Landlords stated that the Tenants not only did a lot of physical damage to the carpets, but they also heavily stained the carpets. The Landlords stated that they tried to clean the spots, but the damage could not be mitigated or cleaned. The Landlords stated they had to pay the above amount to have the carpets replaced on the stairs.

3) \$200.00 – Blind replacement

The Landlords pointed to the photos taken at the end of the tenancy to show that the Tenants damaged and broke several slats in the master bedroom blind. The Landlords stated that the blind had to be replaced, which cost the above noted amount. The Landlords stated that the blind was in perfect shape at the start of the tenancy.

4) \$450.00 – Washroom baseboard repair

The Landlords stated that the Tenants caused a significant amount of water damage in the master bathroom. In particular, the Landlords stated that the baseboards around the bathtub were water damaged, and swollen. The Landlords also noted there was damage around the toilet area. The Landlords stated the baseboards in the room needed to be replaced, which cost the above noted amount. The Landlords acknowledged that they did not have any photo or documentary evidence to show the damage.

As per the invoice, the Landlords stated they were also charged GST on all of the above noted amounts.

Analysis

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

In this case, I find the Landlords did not complete a condition inspection report, either at the start of the tenancy, or the end. This is a breach of section 24(2), and 36(2) of the Act. This means the Landlords extinguished their right to claim against the deposit for damage. However, the Landlords still retain the right to obtain the Tenants consent to deduct unpaid utilities, as they attest they did, in writing. Further, even though the Landlords rights to claim solely against the deposit are extinguished, they also filed an application for monetary compensation for damage or loss under the Act, which includes damage to the rental unit. I do not find this extinguishment noted above precludes the Landlord from pursuing this claim for damage or loss under the Act.

This is discussed further in policy guideline #17:

- 9) A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:*
- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
 - to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
 - to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
 - to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

I note the Landlords attest to the house being almost new, and in near perfect condition at the start of the tenancy. Photos were provided to show before and after tenancy. Based on all of the above, the evidence (photos and the invoice) and the undisputed testimony provided at the hearing, I find the Landlords have sufficiently demonstrated that the Tenants are responsible for the first 3 items noted above. Including GST, this totals \$1,995.00.

With respect to the 4th item above, I find the Landlords have failed to sufficiently show the nature and extent of the damage. Notably, there is no photo of this damage. Without further proof from the Landlords on this item, I find they have not sufficiently demonstrated that the Tenants are liable for this item.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with this application, I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I accept the undisputed testimony that the Landlords and the Tenants agreed in writing to allow the Landlord to retain \$150.00 of the \$1,200.00 security deposit. Which leaves a security deposit balance of \$1,050.00. I authorize the Landlords to retain the full amount of this deposit to offset what is owed.

In summary, I find the Landlords are entitled to a monetary order based on the following:

Claim	Amount
Items #1-3 (including gst)	\$1,995.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$1,050.00)
TOTAL:	\$1,045.00

Conclusion

The Landlord is granted a monetary order in the amount of \$1,045.00, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: April 19, 2021

Residential Tenancy Branch