



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, MNDL, MNDCL-S, FFT, FFL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied through the direct request proceedings on December 5, 2020 for:

1. An Order for the return of double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

In an Interim Decision, dated December 31 the Tenant’s application was adjourned to this date.

The Landlord applied on December 24, 2020 for:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord’s application sets its claim total at \$1,000.00 and the Landlord later provided a monetary order worksheet setting out a total claim of \$1,400.00. The Landlord confirms that no amendment was made to increase the total claimed amount beyond that set out in the application.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. As the Landlord did not amend their application to increase the claimed amount, I find that the Landlord is limited to a total claim of \$1,000.00. The Landlord was given opportunity, with the Tenant's consent, to detail those claims totalling \$1,000.00 as set out below.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on September 1, 2017 and ended on September 1, 2020. The Landlord received the Tenant's forwarding address on September 21, 2020. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenant.

The Tenant states that they originally paid \$850.00 for the security deposit and then with consecutive tenancy agreements paid additional amounts for a total of \$950.00. The Tenant states that they have no supporting evidence of the extra payments. The Landlord states that the Tenant did not pay any more than \$850.00 as the security deposit.

The Landlord states that the Parties agreed to a move-out inspection for August 28, 2020 but that the unit was not ready, and the Landlord informed the Tenants another 3 days to complete the cleaning and that the inspection would then be done. The Landlord states that the Tenant was told to contact the Landlord upon its completion for the inspection. The Landlord states that it heard nothing from the Tenant. The Tenant states that it only received the offer for the August 28, 2020 inspection and that the Landlord had said on that date it would get back to the Tenant. The Tenant states that

it completed the cleaning later in the day on August 28, 2020 and on that date informed the Landlord the unit was ready. The Tenant states that the Landlord did not get back to the Tenant with another offer for an inspection.

The Tenant does not dispute the Landlord's claim of \$262.49 for the cost of carpet cleaning.

The Landlord states that the stove was new in 2011 and that at the end of the tenancy the stove had two burners not working and burner plates were damaged with burns and holes. The Landlord states that it replaced the stove with a used stove and claims the replacement cost of \$350.00. The Tenant states that only one burner was not working at the end of the tenancy and that the Landlord had been informed during the tenancy of this issue. The Tenant states that the other burner was damaged by the Tenant during the tenancy and the Landlord replaced the burner during the tenancy. The Tenant states that the stove looked to be at least 20 years old and that the Tenant only used it normally. The Tenant argues that any damage was normal wear and tear given the age of the stove.

The Landlord states that without the Landlord's permission one of the Tenants increased the water tank level in the toilet leading to continual draining and increased consumption of water. The Landlord states that water was included with the rent. The Landlord states that over the tenancy they noticed the increase in their water bills and suspected a water leak somewhere. The Landlord confirms that it did not inspect the Tenants unit or toilet for the cause of the increased water consumption. The Landlord states that they worked long on calculating the increased water consumption costs and claims a reduced amount of \$387.51. The Landlord did not provide any copies of their water bills but provides a handwritten calculation. The Tenant states that no adjustments were made to the toilet and that no water running was ever noticed by the Tenants. The Tenant states that the Landlord did inspect the unit in 2020 because it suspected a water leak. The Tenant argues that if the Landlord noticed the increased

trend, it should have been repaired much earlier in the tenancy. The Tenant states that they have always been diligent about reporting issues to the Landlord and if this had of been an issue it would have been reported.

Analysis

Section 35(2) of the Act provides that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 36(2) of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 35 (2). Section 17(2) of the Regulations provides that if the tenant is not available for the first offered inspection,

(a)the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b)the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

Based on the undisputed evidence that the unit was not completed for the move-out inspection for the first opportunity, I find that the Tenant was not available for that opportunity. As the Landlord provided no evidence of a second opportunity given in the approved form, I find that the Landlord failed to provide two opportunities to conduct a move-out inspection and that the Landlord's right to claim against the security deposit for damage to the property was extinguished at move-out.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord's right to claim against the security deposit for damages to the property was extinguished at move-out the Landlord's only option was to return the security deposit.

Given the Landlord's evidence that the security deposit remained at \$850.00 and as the Tenant provides no supporting evidence of having paid more during the tenancy, I find on a balance of probabilities that the Landlord collected \$850.00 as a security deposit. Based on the undisputed evidence of the Landlord's receipt of the forwarding address I find that the Landlord had until October 6, 2020 to return the security deposit. Based on the undisputed evidence that the Landlord did not return the security deposit I find that the Landlord must now pay the Tenants double the security deposit plus zero interest of **\$1,700.00**. As the Tenants' claim has been successful, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,800.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. As the Tenants did not dispute the Landlord's claim of **\$262.49** for the cost of carpet cleaning, I find that the Landlord is entitled to this amount.

Policy Guideline #40 provides that the useful life of a stove is 15 years. Given the Tenant's testimony of the age of the stove, the Landlord's photos showing an aged stove and as the Landlord provided no supporting evidence of the age of the stove I find on a balance of probabilities that the Landlord has not substantiated that the stove had any remaining useful life at the end of the tenancy and that any costs to deal with the stove therefore remain with the Landlord. I dismiss the claim for the cost to replace the stove.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

The Landlord's evidence of when it noticed the water increase during the three-year tenancy was vague. The Landlord did not provide any water bills to support the claimed increase. The Landlord's evidence is that no inspection of the unit was undertaken to determine if the unit was the source of the increase. For these reasons I find that the Landlord has not provided sufficient evidence to substantiate that the Tenants caused the increase, that the costs claimed were incurred or that the Landlord took reasonable steps to mitigate any loss that may have come from the Tenants' unit. The Landlord's claim for water costs is therefore dismissed. As the Landlord's claims have met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total claim of **\$362.49**. Deducting this amount from the Tenants' entitlement of **\$1,800.00** leaves **\$1,437.51** owed to the Tenants.

Conclusion

The Landlord's application is dismissed.

I grant the Tenants an order under Section 67 of the Act for **\$1,437.51**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: May 05, 2021

Residential Tenancy Branch