



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution. The participatory hearing was held by teleconference on May 18, 2021. The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security and pet deposit in satisfaction of the monetary order requested; and,
- to recover the cost of the filing fee.

The Landlords attended the hearing. However, the Tenants did not. The Landlords testified that they sent a Notice of Hearing to each of the Tenants by registered mail on January 18, 2021. The Landlords stated that they sent these packages to the address the Tenants provided them after moving out (forwarding address). The Landlord was unable to provide registered mail tracking information. However, I accept their testimony that it was mailed it on the 3rd day after our branch provided this Hearing package to the Landlords. Pursuant to section 89 and 90 of the Act, I find the Tenants are deemed served with these packages 5 days after they were mailed on January 23, 2021. I am satisfied the Landlord has sufficiently served the Tenants with the Notice of Hearing and evidence.

The Landlords were 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 a monetary order for damage or loss under the Act?
- Are the Landlords authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested?

Background and Evidence

The Landlords testified that monthly rent was set at \$1,550.00, and was due on the first of the month. The Landlords stated that they collected a security deposit of \$750.00 and a pet deposit of \$750.00. On the Landlords' application, they also indicated they hold a security deposit of \$750.00 and a pet deposit of \$750.00. The Landlords stated that they still hold these deposits.

The Landlords stated that the Tenants moved into the rental unit on February 1, 2019. A move-in inspection was completed, as was the move-in inspection report. However, the Landlords stated that the Tenants abandoned the rental unit part way through July 2020, without giving proper notice, so it was not possible to schedule a move-out inspection before the Tenants vacated. The Landlords provided photos of the rental unit taken at the end of the tenancy to show the dirt, debris, and damage. The Landlords explained that the rental unit was brand new at the start of the tenancy, and the unit had never been lived in before.

The Landlords provided a monetary order worksheet outlining the 3 items they are seeking in this application. They are as follows:

1) \$560.00 – Cleaning Fees

The Landlords stated that when the Tenants abandoned the unit part way through July 2020, the unit was left in disarray, and it was unclean, and damaged. The Landlords stated that the Tenants never came back to clean up their mess, to fix any of the damage, or to remove the last of their personal items. The Landlords provided photos showing the condition of various surfaces and appliances at the end of the tenancy, and to show that the Tenants left a layer of dirt on all surfaces such that it required significant time and effort to clean. For example, the Landlords stated that the Tenants had a dog, and they would put it on the deck for long periods of time, such that it would defecate all over the deck surface. The Landlords stated that there was a layer of dog feces all over both decks, and the interior floors, and lower walls were filthy.

The Landlords stated that the Tenants left behind beer can empties, and piles of garbage. The Landlords stated that they hired a company to clean the unit up. This company charged them \$35.00 per hour, for a total of 16 hours on August 3, 2020. A copy of this invoice was provided into evidence.

2) \$1,785.00 – Wall repair and painting

The Landlords stated that the Tenants left behind an excessive number of wall gouges, scuff marks, and holes in the drywall, all over the rental unit. The Landlords provided videos and photos taken after the Tenants vacated the unit to show how many marks and holes there were in the hallways, the bedrooms, and near the dining area. The Landlord stated that the Tenants left a hole in the drywall in behind the bedroom door in the master bedroom where they pushed the doorknob through the wall. The Landlords stated that the rental unit was last repainted around 1.5 years before the Tenants moved out, and the walls did not need repainting, except where drywall patching was required. The Landlords stated that given the number of patches, approximately half of the rental unit needed repainting, after the holes were filled. The Landlord provided a copy of an invoice for the above noted amount and stated they hired a local contractor to perform this work.

3) \$450.00 – Pressure Washing

The Landlords stated that the Tenants had a dog which defecated all over the decks, and the feces dried to the surface, and stained the top layer of decking. The Landlords stated that they to hire a professional pressure washer to come and clean off the decks due to all the feces. The Landlords provided photos of the stains on the deck taken at the end of the tenancy. A copy of an invoice was provided into evidence for the above noted amount.

The Landlords stated that they do not wish to collect the full amount of their claim, and only want permission to retain the security and pet deposit, and no more. The Landlords requested to cap their claim such that they do not have to enforce any monetary order against the Tenants.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord 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 Tenant. Once that has been established, the Landlord 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.

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find the evidence before me sufficiently demonstrates that the Tenants caused a significant amount of wall damage. Although much of the wall damage is minor, there are a significant number of blemishes. I find the cumulative effect of all the minor damage goes well beyond normal wear and tear. I also note some of the damage was not as minor, such as the hole in the drywall in the master bedroom. I accept these areas would have required repainting as well. Further, I accept that the Tenants had a dog, and that the dog soiled the deck surfaces, which were never cleaned before they moved out, which necessitated the pressure washing of the decks. Additionally, I find there is sufficient evidence to show the Tenants failed to leave the rental unit in a reasonably clean manner, overall. It appears there was little, if any cleaning done, and they also left behind personal items, and garbage.

Based on the undisputed testimony and evidence, I accept that the Landlord paid the amounts noted on the invoices provided. I find the Landlord's expenses to remedy the rental unit are reasonable considering the issues left behind. I award all of the items the Landlord is seeking (items 1, 2, and 3).

As stated above, the Landlord did not wish to pursue a monetary order beyond the total of the deposits held. Accordingly, although the Landlords have demonstrated the Tenants owe more, I reduce the Landlords' award to \$1,500.00, at their request, which is the sum of the security and pet deposits they hold.

I authorize that the security and pet deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenants.

Conclusion

The Landlords are granted permission to retain the security and pet deposits, totalling \$1,500.00, in full satisfaction of this monetary claim.

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: May 18, 2021

Residential Tenancy Branch