



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL
 MNDCT, MNSD, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlords’ Application for Dispute Resolution was made on April 7, 2021. The Landlords applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover the filing fee.

The Tenants’ Application for Dispute Resolution was made on April 16, 2021. The Tenants applied for the return of their security deposit, compensation under the *Act* and the return of the filing fee.

One of the Landlords and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings. Additionally, both parties agreed that neither party submitted documentary evidence to these proceedings.

I have reviewed all the evidence and testimony 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

- Are the Landlords entitled to monetary compensation for damages under the *Act*?
- Are the Landlords entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?
- Are the Landlords entitled to recover the cost of their filing fee?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to a monetary order for compensation under the *Act*?
- Are the Tenants entitled to recover the cost of their filing fee?

Background and Evidence

The parties agreed that the tenancy started in December 2015 as a one-year fixed-term tenancy that rolled into a month to month after the first year. Rent in the amount of \$1,450.00 was to be paid by the first day of each month, and the Tenants had paid a \$725.00 security deposit and a \$725.00 pet damage deposit.

Both parties agreed that the Tenants moved out of the rental unit on February 28, 2021, in accordance with the *Act*. Additionally, both parties agreed that a verbal walk-through move-out inspection was completed but that no written move-out inspection/condition report was completed by the Landlord.

The Landlord testified that during the verbal walkthrough of the rental unit, no issues were noted, but that damage to the window binds and the lawn was noted after the Tenants had left. The Landlord testified that the binds were stained and that new binds had to be installed at the cost of \$300.00, and the grass on the lawn was dead and new sod and an irrigation system installed at the cost of \$2,000.00. The Landlord testified that they are seeking to keep the security and pet deposits to offset part of these costs.

The Tenant testified that the binds may have been a bit dirty at the end of the tenancy and may have required some cleaning but that they were working fine and did not need to be replaced. The Tenant testified that the grass on the lawn was burnt at the end of tenancy due to the heat of the previous summer but that they did not damage the lawn and should not be responsible for all new sod, maybe a bag of seed at most. Also, the Tenant testified that the Landlord did not bring up a problem with either the binds or the lawn until several weeks after the tenancy has ended.

The Tenant testified that they are seeking the return of double their security and pet damage deposit due to the Landlord's breach of the *Act* in not completing the move-out inspection.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties that this tenancy ended in accordance with the *Act* on February 28, 2021. I also accept the testimony of both parties that the Landlord did not conduct a written move-out inspection at the end of this tenancy. Section 35 of the *Act* and section 19 of the *Residential Tenancy Regulation* (the "*Regulation*") states the following regarding the move-out inspection and the condition inspection report:

Condition inspection: end of tenancy

35 (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

*(a) on or after the day the tenant ceases to occupy the rental unit,
or*

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Disclosure and form of the condition inspection report

19 *A condition inspection report must be*

(a) in writing,

(b) in type no smaller than 8 point, and

(c) written so as to be easily read and understood by a reasonable person.

It is the responsibility of the Landlord to ensure that the written move-out inspection was completed as required. I find that the Landlords were in breach of section 35 of the *Act* and section 19 of the *Regulation* by not completing the written move-out inspection report for this tenancy.

Consequences for tenant and landlord if report requirements not met

36 (2) *Unless the tenant has abandoned the rental unit, 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*

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequently, pursuant to section 36(2) of the *Act*, I find that by not completing the written move-out inspection report, the Landlords have extinguished their right to make a claim against the security and pet damage deposits for this tenancy. Accordingly, the Landlords were required to return the security and pet damage deposits in full to the Tenants within 15 days of the tenancy ending, pursuant to section 38 of the *Act*.

Section 38 of the *Act* states that if the landlord has been extinguished their right to make a claim, and they have not returned the security deposit within the 15 days of the tenancy ending, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (5) *The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or **36 (2) [landlord failure to meet end of tenancy condition report requirements]**.*

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenants have successfully proven that they are entitled to the return of double the security deposit, in the amount of \$2,900.00 for this tenancy.

As for the Landlords' claim for a monetary order for damages, awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have carefully reviewed the Landlord's application, and I find that the Landlord has not provided any evidence to show that the Tenants breach the *Act* during this tenancy or proof of the value of their claim. Therefore, I dismiss the Landlords' claim in its entirety.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

I find for the Tenants, in the amount of \$3,000.00, granting a monetary order for the return of double the security deposit and the recovery of their filing fee for these proceedings.

Conclusion

I grant the Tenants a Monetary Order in the amount of \$3,000.00. The Tenants are provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: September 3, 2021

Residential Tenancy Branch