



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlord: MND MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 18, 2024. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenants both attended the hearing and provided affirmed testimony. Both parties acknowledged receipt of the each other’s application packages, and evidence. Neither party took issue with the service of the documents. I find both parties sufficiently served each other with their application, Notice of Hearing and evidence.

All parties provided affirmed testimony and 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 submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenant

- Is the Tenant entitled to the return of double the security deposit held by the Landlord?

Landlord

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that the tenancy started on September 15, 2021, and ended on September 1, 2024.

Both parties also agree that monthly rent was set at \$1,275.00 and that the Landlord collected a security deposit of \$625.00 and a pet deposit of \$625.00. The Landlord only returned \$75.00 of the deposits, which the Tenants confirmed getting. The Landlord confirmed receipt of the Tenant's forwarding address prior to the end of the tenancy.

Tenant's Application

The Tenants are seeking the return of the remainder of their deposits. Since they already received, \$75.00 back, they are seeking the remainder, since no agreement could be reached on the damaged items.

Landlord's Application

In the Landlord's application, they indicated they are seeking 2 items, as follows:

- 1) \$450.00 – Carpet repairs

The Landlord explained that the Tenants had a cat, which vomited on the carpet. This vomit penetrated the carpet, and created a stain which could not be removed, despite the Landlord's attempts to clean it with a steam cleaner. The Landlord also stated that they consulted a professional on this item, and when he came, he advised he could not clean it, since it had soaked through, and the spot would have to be removed, and replaced with a new piece of carpet. The Landlord had the contractor complete this work, and the invoice was provided into evidence.

The Tenants feel this cost is too much, and they assert it could have been cleaned, had the Landlord tried to get it professionally cleaned instead of cutting out the section. The Tenants acknowledge that their cat vomited on the carpet.

2) \$625.00 – concrete repairs

The Landlord is seeking this amount in order to removed rust stains from the concrete patio of the rental unit. Photos were provided showing the stains left by a planter that the Tenants had. The Landlord stated the Tenants tried to remove the stains, but were unsuccessful, and so they obtained a quote from a concrete repair artist, which came to \$1,200.00. However, the Landlord is only seeking \$625.00.

The Tenants do not dispute that their pot left a stain on the patio, but they feel it is normal wear and tear since it is exterior concrete.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Each application will be addressed separately. For each application, the burden of proof is on the person who made that application 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 other party. The Applicant must also provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Landlord's Application

I turn to the first item, the carpets. I note the Tenants do not dispute that their cat vomited on the carpet and stained it. Although the Tenants feel the Landlord could have cleaned it, rather than opting for a more expensive cut and replace option, I find it important to note that the Landlord attempted, several times to clean it themselves with a steam cleaner. Then when they had the professional come by, he opined it was not cleanable, since it had penetrated too deep. After considering the testimony and

evidence, including the photos, I find the stain had in fact penetrated very deeply, as it can be seen from the back side of the carpet. I accept the carpet professionals opinion that it needed to be cut out, not cleaned. Further, if the Landlord defied this advice from the carpet contractor, and tried to clean it anyways, they could have incurred additional costs, which may not have been successful. I find the course of action chosen is reasonable, and I find the Tenant's are liable for this item, in full.

With respect to the concrete stain, I note the Tenants do not dispute they caused this stain. That being said, I do not find the remaining stain, after all the cleaning attempts is as bad as the Landlord has asserted. I note this is an exterior patio, where it could be reasonably expected that pots and furniture would be placed. Concrete is a porous substrate, and some minor staining is relatively normal, over time. I find the nature and extent of the concrete stain is more in line with normal wear and tear, rather than negligence. I do not find the Tenant's are liable for this item, and it is dismissed, in full, without leave.

Tenants' Application

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the Landlord received the Tenant's forwarding address before the end of the tenancy. The tenancy ended on September 1, 2024, and the Landlord filed on September 16, 2024, which was within the allowable 15 day window. Extinguishment was not raised as an issue.

Since the Landlord filed this application on time, I find the Tenants are not entitled to double the deposits.

With respect to the filing fees paid by each party, it is a discretionary award, and I find neither party is entitled to recover the filing fee, since neither party was fully successful with their claim.

The Landlord collected \$1,250.00 in deposits, and returned \$75.00. The Landlord owes interest on the deposits, in the amount of \$51.83, as per the regulations. This means, they currently hold \$1,226.83 in deposits, including interest, after deducting the \$75.00.

The Landlord is authorized to deduct what they are owed, \$450.00, from the deposits held. The Landlord must return the balance of the deposits, \$776.83.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of \$776.83. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant 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: October 18, 2024

Residential Tenancy Branch