Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes Tenant: MNSD FF
Landlord: MNR MND MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 28, 2025. 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. The Landlord acknowledged receipt of the Tenants' application package and evidence. The Tenants acknowledged receipt of the Landlord's application package and evidence.

All parties provided 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

- Are the Tenants entitled to the return of double the security deposit held by the Landlord?

Landlord

- Is the Landlord entitled to a monetary order for damage to the rental unit or for unpaid rent?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that:

- monthly rent was $2,400.00 and was due on the first of the month.
- The tenants moved in sometime in late January 2024, but the fixed term of the agreement started on February 1, 2024, and they moved out at the end of December 2024. The fixed term lease was set to end on January 31, 2025.
- The Landlord still holds a security deposit in the amount of $2,400.00
- The Tenants provided, and the Landlord received, the Tenants' forwarding address in writing on September 14, 2021.

Move-in and Move-out inspection

A copy of the condition inspection report was provided into evidence, which shows that the parties both signed and agreed to the contents of the move-in portion of the condition inspection report. The Tenants assert they never walked through the unit with the Landlord at the start of the end, and stated that they assumed the move-in condition inspection was just their tenancy agreement, but they also confirmed that they read the document, which clearly lists it as a condition inspection report.

The Tenants provided their notice that they would be moving out on December 1, 2024, via text message, and they indicated they would be moved out by the end of the month. The Landlord stated that on December 30, 2024, he was text messaging with the Tenants about moving out, returning the keys, and doing a move-out inspection, and after the Tenants said they would come to hand back the keys at 12pm, he said he would be there. The Landlord's agent attended the unit at that time, and the Tenants were not there. Eventually, a few hours later, the Tenants showed up. One of the Tenants was doing minor cleaning touch ups, while the other was taking videos of the condition of the unit. The Landlord also took a video of the unit at this time.

No condition inspection was completed at that time by the Landlord or his agent, but in the days following, the Landlord completed and signed the move-out portion of the inspection report and sent it to the Tenants about a week after they met and walked through. The Tenants did not sign it as they did not agree with it.

Tenants' Application

The Tenants have applied for the return of their security deposit. They provided a proof of service document showing one of the Tenants left their forwarding address, in writing, at the Landlord's front door, in the mailbox, on January 9, 2025. A copy of this document was provided, and the proof of service was signed by the other Tenant who acted as the witness. The Tenants never received any of the deposit back.

Both parties spoke about how they tried to come to an agreement about the money owed by the Tenants for rent and/or damage, and the security deposits held. However, despite there being a couple of suggestions and offers, and various conditions, there was no clear offer, and acceptance about the Landlord and the Tenant agreeing that the security deposit could be retained in a clear and explicit manner. The text messages, partly in broken English, lack sufficient detail and clarity, such that there was a clear meeting of the minds on what to do with the security deposit.

The Landlord denied getting the Tenant's forwarding address, in writing, other than as part of this application for dispute resolution. He asserts he was out of the country from December 17 – January 24, 2025. The Landlord applied against the deposits on March 3, 2025, for several different monetary items, listed below.

Landlord's Application

The Landlord provided a monetary worksheet which was inconsistent with the amounts and items he listed on his application. I note there was no amendment filed, to change or modify the amounts on his application. As such, the Landlord's claim will be limited to the dollar value listed on his original application. His original application lists the following as definitive amounts:

1) $1,404.38 – repainting costs and cleaning costs

The Landlord provided two invoices, one for painting and filling holes in the amount of $735.00, and another for $669.38. The total of these two invoices is $1,404.38, which is the amount noted on the application. As such, these are the two items which will be addressed further, and the others such as legal fees and fridge door, are dismissed, without leave.

With respect to the painting costs, the Landlord asserts that the rental unit was built in 2022, so the paint was not at the end of its useful life. The Landlord stated that there were lots of holes and marks on the walls, which required filling and spot repainting. The Landlord only repainted parts that were damaged. A copy of the invoice was provided. The Landlord provided a few photos of the damage at the end of the tenancy (a few scuffs and marks on the walls).

The Tenants acknowledge that they had a young child who may have caused some damage, but they feel it is normal wear and tear and they deny causing any real damage.

With respect to the cleaning costs, the Landlord asserts that the Tenants failed to clean up the stove top, the fridge, washroom, toilet, and other areas such as a carpet stain. Photos of stove cooktop were provided into evidence, but no other photos of the dirt or debris.

The Tenants stated they cleaned up very well, and deny leaving any real mess. They feel this claim is retaliatory for their security deposit claim.

The Tenants provided a copy of the video they took for the move-out but it is low resolution and moves very quickly through the unit, which makes it nearly impossible to reliably focus on any one item, including any potential stains on the carpets or walls. The only reliably and visibly dirty item was the stove top.

2) $1,851.55 – Duct cleaning

The Landlord asserts that the Tenants violated the tenancy agreement by smoking cannabis inside the rental unit and outside. The Landlord pointed to text messages showing he brought this up to the Tenants, but the Tenants denied that they smoked inside. The Landlord provided a text message from the neighbour who claims they saw the Tenant smoking outside in the yard. The Landlord stated that due to the smoking inside, he had to have the entire ventilation system professionally cleaned at the above noted cost.

One of the Tenant’s assert that she has asthma, and there is no way either of them would smoke inside. The Tenants also assert that the air quality in the unit was never good and it smelled the whole time they were in there.

Analysis

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

The applicant bears the burden of proof 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. Once that has been established, the applicant must then 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.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

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.

I note the Landlord was allegedly out of town at the time the Tenant's claim to have left their forwarding address, in writing, at his front door. However, the Landlord provided no evidence to corroborate he was out of town such as a flight ticket or itinerary. I have reviewed the Tenant's proof of service document and I have weighed this against the fact that the Landlord said he never got the forwarding address, until he was given the Notice of Dispute Resolution Proceeding. I find it important to note that the Tenant's proof of service was not signed by a third party, and was only done by the Tenant's themselves. I afford this less weight than if it were signed by an independent third party. Overall, given the competing versions of events, I find the Tenants have not sufficiently demonstrated that they served the Landlord with their forwarding address on January 9, 2025, as they assert.

I do not find it is sufficient to serve a forwarding address, in writing, by way of the Notice of Dispute Resolution Proceeding. It must be proven that this has been delivered to the Landlord before the hearing package is served.

I do not find the Tenant's security deposit will be doubled under section 38(6) of the Act. However, the Landlord still holds the deposit, and this will be further addressed below.

Landlord's Application

Next, I turn to the Landlord's claim for monetary compensation.

First, I turn to the condition inspection report. I note the Landlord and the Tenant both signed and agreed to the contents of the move-in portion of the condition inspection report. I find the move-in portion of the report is reliable. However, with respect to the move-out portion, I note the parties met on December 31, 2024, and the Landlord's agent, and the Tenants both took videos of the condition of the unit. However, I note that the Landlord never attempted to fill out the move-out portion of this report until later, when it was filled out by the Landlord and sent to the Tenants to sign. However, the Tenants did not sign it because they did not agree with it.

I note that section 35 of the Act specifies the following;

> ***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.*
>
> *[…]*
>
> *(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.*
>
> *(5)The landlord may make the inspection and complete and sign the report without the tenant if*
>
> *(a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*
>
> *(b)the tenant has abandoned the rental unit.*

I note that section 35 of the Act specifies that the parties must be together and inspect the unit before it is re-rented to someone else. I also note that the Act also states that both parties must sign the report and the Landlord must then give a copy of the report to the Tenant afterwards. Section 35(5) of the Act gives an exception to the Landlord whereby he can complete the move-out report without the Tenants if the Tenant did not participate in either of the attempted inspections or the Tenant abandoned the unit. In this case, I find neither of section 35(a) of (b) apply, and I find this was not a situation

where the Landlord was given liberty under the Act to fill out the report after the fact, without the Tenants present. When reading all of section 35 of the Act together, the implication is that the Landlord should have filled out the move-out report with the Tenants present, and had them sign it right then and there, since section 35(5) does not apply. By failing to fill it out and instead finishing it off and signing it afterwards, I find this compromises the reliability of the move-out portion of this document. I afford the move-out portion of the report no weight.

I note the Tenants provided a copy of the video they took at move-out. However, this video is very low resolution and moves around so quickly it is almost impossible to reliably interpret the condition of various items. The only item I find it sufficiently clear is the stove, which appears dirty.

1) $1,404.38 – repainting costs and cleaning costs

The Landlord provided two invoices, one for painting and filling holes in the amount of $735.00, and another for $669.38. The total of these two invoices is $1,404.38, which is the amount noted on the application.

With respect to the painting costs, I do not find there is sufficient evidence showing that any of the damage or marks on the walls goes beyond reasonable wear and tear, which should be expected in a tenancy. The Landlord provided a couple of photos, but I do not find they show damage that is beyond normal wear and tear. Further, the video is also not helpful, and does not support this item. I dismiss the claim for painting, in full.

With respect to the cleaning costs, the Landlord asserts that the Tenants failed to clean up the stove top, the fridge, washroom, toilet, and other areas such as a carpet stain. Photos of stove cooktop were provided into evidence, but no other photos of the dirt or debris. I have reviewed the testimony and evidence on this matter, and I find the Landlord has failed to sufficiently demonstrate that the rental unit was not sufficiently clean at the end of the tenancy, with the exception of the stovetop. I decline to award the cleaning costs, except for a nominal amount for the cooktop.

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I award $100.00 for cleaning of the stove.

2) $1,851.55 – Duct cleaning

I have reviewed the testimony and evidence on this matter. I note the Landlord asserts the Tenants were smoking in the rental unit, as well as outside with the door open. The Landlord provided a text message from the neighbour to corroborate that they saw the Tenant smoking outside. The Landlord also pointed to the invoice for duct cleaning, which states that “there was a noticeable odour of smoke” coming from the basement unit. The Tenants stated that one of them is asthmatic, and they have a young child, so there is no way they would have smoked inside. One of the Tenants does not dispute that he smoked on the patio area. However, they stated that there were issues with the air for most of the tenancy, but they deny it was from smoking.

When weighing these two versions of events, I note the Landlord has provided an observation from a third party, the duct technician, who asserts that he smelled smoke directly in the lower unit. I find it more likely than not that the Tenants were either smoking in or near the unit with the door open, and that this caused a smell in the basement. I find the Tenants ought to be liable for some of this loss. However, I note the system is shared by the whole house, and I do not find it is reasonable to award the costs to clean all of the ducts in the house, including the ones upstairs. In this case, I award a nominal award of $500.00 for the duct cleaning of the portions directly abutting or feeding into the suite.

3) $2,400.00 – January 2025 rent

I note the Tenants were under a fixed term tenancy agreement until the end of January 2025. They gave their text message notice that they would be moving out on December 1, 2024. The Landlord received it that same day and re-posted the ad right away on multiple sites. I find the Tenant’s written notice breached section 45 of the Act because they were under a fixed term, and were not legally able to end the tenancy without liability. I find there is insufficient evidence that the Tenants had any other legal basis to end the tenancy before the end of the fixed term period. I do not find any of the other issues the Tenants raised with respect to air quality were such that it would allow them to end the tenancy early without liability.

I find the Tenants are liable for January rent. However, in order for the Landlord to receive all of this amount, they must demonstrate that they fully mitigated their losses for January 2025. In this case, I note the Landlord reposted the ad right away for the same price. However, the Landlord chose to select a tenant who wanted to move in on February 1, 2025, rather exhaust all options to find someone to move in sooner. I note

the Landlord was away out of the country from December 17 – January 24. I find this prolonged period away would have contributed to the Landlord's inability to re-rent sooner, say mid-January. I find the Landlord partially mitigated his losses.

I note the following relevant portions of the **Policy Guideline #5 – Duty to Minimize Loss**:

> ***Partial mitigation***
> *Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.*

I award $1,818.55 for partial mitigation of January rent. I note the Tenants assert it was re-rented sooner than that, but they provided insufficient evidence to support this.

Also, pursuant to section 72 of the Act, I award the recovery of the filing fee paid by the Landlord. I decline to award the Tenant's filing fee, since they were not successful in their claim for double the security deposits.

In summary, after totalling the items listed above which the Landlord was awarded, they amount to $2,518.55.

Pursuant to section 72 of the Act, I authorize the Landlord to retain the deposit, to offset what is owed. The Landlord holds $2,400.00 in deposits, but with interest, this amount is $2,518.55. The Landlord may retain the deposit in full satisfaction of what is owed.

Conclusion

The Landlord may retain the deposits, in full.

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: March 28, 2025

Residential Tenancy Branch