



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenant applied for return of double the security deposit less certain agreed deductions. The landlords applied for compensation for unpaid rent and damages to the rental unit and authorization to retain the security deposit. Both parties requested recovery of the filing fee paid for their applications. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Are the landlords entitled to compensation for unpaid rent and damages?

Background and Evidence

On November 1, 2009 a one-year fixed term tenancy commenced. The tenant was required to pay rent of \$1,100.00 on the 1st day of every month and paid a \$550.00 security deposit. A move-in and move-out inspection report was signed by the parties although the tenant disputed receiving a copy of the move-out inspection report. The landlords filed an Application for Dispute Resolution on September 13, 2010. On September 16, 2010 the tenant filed an Application for Dispute Resolution.

On August 3, 2010 the tenant mailed a written notice to the landlords that she would be vacating the rental unit effective August 31, 2010. The landlords received the notice on August 6, 2010 and starting advertising efforts August 8, 2010. Advertising efforts included online advertisements, advertisements in a local newspaper and a sign in front of the rental unit. On September 8, 2010 the landlords entered into a new tenancy agreement starting October 1, 2010 the monthly rent of \$1,200.00 per month.

The landlords are seeking compensation for loss of rent for September 2010 in the amount of \$1,100.00 and damages in the amount of \$155.83. The landlords' claims, and the tenant's responses, are summarized below:

<u>Item</u>	<u>Amount</u>	<u>Landlord's reason</u>	<u>Tenant's response</u>
Cleaning stove	15.00		Tenant agreed.
Repairing walls	50.00	2 hours to repair/repaint large screw holes over fireplace.	Tenant asked landlords' for paint numerous times. Landlords told tenant not to worry about repairing the damage and they would do it.
Burnt out light bulbs	5.00		Tenant agreed.
Window cleaning	22.50	Cleaned windows inside and out	Agrees to cleaning of the inside of the windows only or one-half of the claim.
Cleaning bathroom	7.50	Found to be unclean after move-out inspection.	Denied bathroom required additional cleaning.
Fridge Crisper	55.83	Fridge was new at beginning of tenancy. Crisper was cracked but the landlord did not notice it until after the move-out inspection was completed.	Denied any knowledge of the cracked crisper.
TOTAL CLAIM	\$ 1,255.83		

The tenant was of the position the landlords could have advertised sooner and in more publications or websites. The tenant submitted that people were making enquiries from the sign in front of the rental unit but the landlords did not show the unit to any of those prospective tenants. The tenant submitted that she had approached the male landlord at the end of July 2010 to explain her financial situation and try to give the landlords as much notice as possible instead of abandoning the unit without notice. The landlords were of the belief the tenant was ending the tenancy to live with her boyfriend since the landlords would not permit the boyfriend's dog to reside in the rental unit.

The landlords were of the position that until they received written notice they could not proceed with advertising efforts as the female landlord had rejected the tenant's attempts to verbally end the tenancy. The landlords advertised in the newspaper that has yielded the best results in the past. The landlords explained that the beginning of the month is the best time to advertise but they missed the start of August due to receiving the tenant's written notice on August 6, 2010. The landlords also submitted that they spoke with all the people that enquired about the unit but that many interested parties were suitable.

Documentary evidence included written submissions from the parties, numerous email and written communication between the parties, the condition inspection reports, tenancy agreement and example of advertising.

Analysis

With respect to the tenant's claim for return of double the security deposit I find the landlords did make an Application for Dispute Resolution within 15 days of the tenancy ending as required under section 38(1) of the Act. Thus, the tenant is not entitled to doubling of the deposit. The tenant is credited with the single amount of the deposit to be offset against awards to the landlords.

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 section 7 and 67 of the Act. Accordingly, the landlords 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.

Based upon the evidence before me, I accept that the tenant violated the fixed term of the tenancy agreement. Whether the tenant's reason for ending the tenancy was as stated by the tenant or as stated by the landlords I find it is inconsequential. The fact remains that the fixed term tenancy was terminated early and the termination was not the result of a material breach by the landlords. I am satisfied the landlords suffered a loss of rent for the month of September 2010. I am also satisfied the landlords made reasonable efforts to re-rent the unit by placing advertisements in multiple medias and

shortly after receiving the tenant's written notice. It is important to note that efforts to minimize the loss must be "reasonable" in the circumstances and does not mean that the party has to do everything possible to minimize the loss. In determining the value of the loss as a result of the breach of the fixed term I have considered that the landlords have also benefited from increased rent of \$100.00 for the month of October 2010. Therefore, the landlord's loss of rent due to the tenant's breach is \$1,000.00 [\$1,100.00 – 100.00].

With respect to repairing the walls, I accept that the tenant had requested paint from the landlords. The tenant also enquired in writing as to whether the landlords would be buying the bathroom cabinet from her or to provide her with instructions on how to repair the walls. The landlords responded in writing on August 27, 2010 and informed the tenant that they would determine if any holes required repairing during the move-out inspection. I find that the landlords' communication dated August 27, 2010 resulted in the tenant not making any repairs to the walls before the tenancy ended. Therefore, I find the landlords took on the responsibility for repairing the walls on their own accord and must bear the cost of those repairs.

Residential Tenancy Policy Guideline 1 provides that landlords are responsible for cleaning the outside of windows at reasonable intervals. Since the landlords are claiming for cleaning of inside and outside the windows, I award the landlords one-half of their claim for window cleaning.

Section 21 of the Residential Tenancy Regulation provides that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of inspection unless either party has a preponderance of evidence to the contrary. The move-out inspection report does not indicate the bathroom required additional cleaning or that the fridge crisper was broken. Given the disputed verbal testimony, I do not find the landlords have provided a preponderance of evidence to contradict the findings on the move-out inspection report. Further, the landlord did not provide a copy of a receipt or estimate to establish the value of the crisper even if I did accept that it was broken during the tenancy. For these reasons the landlords' claims for bathroom cleaning and crisper replacement are denied.

As the stove cleaning and light bulb charges were agreed to by the tenant I award the landlords the amounts claimed for these items.

Given the relative success of each of the parties, I award one half of the filing fee to the landlords and deny the tenant's claim for recovery of the filing fee.

I authorize the landlords to retain the security deposit and it is offset against the amounts awarded to the landlords. With this decision I provide the landlords with a Monetary Order calculated as follows:

<u>Item</u>	<u>Amount claimed</u>	<u>Amount awarded</u>
Cleaning stove	15.00	15.00
Repairing walls	50.00	Nil
Burnt out light bulbs	5.00	5.00
Window cleaning	22.50	11.75
Cleaning bathroom	7.50	Nil
Fridge Crisper	<u>55.83</u>	<u>Nil</u>
Total	\$ 1,255.83	\$ 1,006.75
Filing fee		25.00
Less: security deposit		<u>(550.00)</u>
MONETARY ORDER		\$ 481.75

The landlords must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlords are authorized to retain the security deposit and have been provided a Monetary Order for the balance of \$481.75 to serve upon the tenant.

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: February 11, 2011.

Residential Tenancy Branch