



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNSD

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order in the amount of \$1500.00, and a request for recovery of the \$50.00 filing fee.

The landlord's application is a request for a monetary order for \$2013.79 and a request for recovery of the \$50.00 filing fee.

Tenant's application

Background and Evidence

The tenants paid a security deposit of \$625.00, and a pet deposit of \$100.00 for a total of \$725.00.

This tenancy ended on January 15, 2011 and the landlords were served with a forwarding address in writing on April 4, 2011.

The landlords did not return the security/pet deposits, and did not apply for dispute resolution until May 12, 2011.

The tenants are therefore requesting an order for double the security/pet deposits plus an order for recovery of their filing fee.

The landlords testified that:

- The reason they did not apply for dispute resolution within the 15 day time limit required under the Residential Tenancy Act is because they were unaware of this requirement.
- They knew there was extensive damage in the rental unit and therefore held onto the security deposit while they assess the damages.

Analysis

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlords have not returned the tenants security deposit and did not apply for dispute resolution to keep any or all of tenant's security deposit within the time limit set out under the Residential Tenancy Act.

This tenancy ended on January 15, 2011 and the landlord had a forwarding address in writing by April 4, 2011 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlords must pay double the \$725.00 amount of the security/pet deposit to the tenant, for a total of \$1450.00.

I also order recovery of the \$50.00 filing fee

Total amount allowed in the tenants claim \$1500.00.

Landlords claim

Background and Evidence

The landlords testified that:

- The tenant's cats caused an extensive number of scratches in the drywall of the rental unit and as a result the drywall will have to be patched and repainted and they have had a quote of \$303.00 to have this work done.
- The tenant's cats also caused extensive scratching to the cork flooring in the rental unit and as a result the flooring will have to be repaired. They have had a quote to repair the flooring of \$1196.16.
- The tenant's cats also damaged numerous blinds in the rental unit and those blinds had to be replaced. The original cost of the damage blinds was \$214.63.
- The tenants did have someone cleaning in the rental unit at the end of the tenancy however they did not do sufficient cleaning and an extra 10 hours of cleaning was required. They are therefore requesting 10 hours of cleaning at \$30.00 per hour for a total of \$300.00.

The tenants testified that:

- They are only aware of scratches to the wall under one window, and not the extensive amount of scratching being claimed by the landlords.
- They did do a walk-through of the rental unit when they vacated, (although they never received a copy of a move out inspection report,) however, at the walk-through the landlords did not address any scratching on the floors. Their kittens did scratch

the floors however these were very soft cork floors and since the landlords had allowed them to have cats, they believe this is normal wear and tear.

- They do not dispute the claim for the damage blinds.
- They do dispute the claim for cleaning because they hired a professional cleaner who cleaned for four hours and they believe the rental unit was left reasonably clean.
- It also concerns them that the photo evidence provided by the landlords has obviously been taken after new tenants moved into the rental unit and therefore they believe that the photos may not accurately reflect the condition of the unit when they vacated.

Analysis

Under the Residential Tenancy Act the landlords are required to do a move-out inspection, produce a move-out inspection report, and provide a copy of that report to the tenants.

The reason for this move-out inspection report is so that all parties are aware of the condition of the rental unit at the end of the tenancy.

In this case the landlords failed to produce the required move-out inspection report, and therefore it's basically their word against the tenants as to the condition in which the unit was left.

However the burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Further although the landlords have provided some photo evidence, the photos were taken after new tenants were allowed to move into the rental unit, and therefore may not accurately reflect the condition of the rental unit at the end of the previous tenancy.

Therefore in this claim it is my finding that the landlords have not met the burden of proving the full amount claimed.

I will however allow a portion of the claim, because the tenants admit to some of the damages.

The tenants have admitted that some of the wall damage was caused by their cats, and therefore I will allow 1/2 the amount claimed by the landlords.

The tenants have also admitted that their cats scratch the flooring in the rental unit and although they may feel its normal wear and tear when the flooring is soft cork flooring, it is my decision that it is not. The landlords may have allowed the tenants to have cats in the rental unit however it still the tenants responsibility to ensure that their cats do not caused damage in the rental unit.

I will not allow the full amount claimed by the landlords however, because since new tenants have already moved into the rental unit it's possible that some of the damage was caused after the respondents vacated.

I believe the majority of the damage was likely caused by the tenant's cats, and therefore I will allow 3/4 of the amount claimed for floor damage.

The tenants do not dispute the amount claimed for replacing the blinds and therefore I allow the full amount claimed.

I deny the landlords claim for cleaning. Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

I will allow recovery of the landlords filing fee.

Therefore the total amount of the landlord's claim that I have allowed is as follows

Wall repairs and painting	\$151.50
Floor repairs	\$897.12
Replace damage blinds	\$214.63
Filing fee	\$50.00
Total	\$1313.25

Conclusion

I have allowed \$1500.00 of the tenants claim and I have allowed \$1313.25 of the landlords claim. I have therefore set off the \$1313.25 against the \$1500.00 and have issued an order for the landlords to pay \$186.75 to the tenants.

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: August 10, 2011.

Residential Tenancy Branch