



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, all three tenants and an agent for the tenants.

The parties confirmed that they had served and received evidence from each other. The tenants confirmed they served the landlord with their evidence on July 5, 2012. Rule 4.1 requires a respondent to serve their evidence as soon as possible or at least 5 days prior to the hearing. "At least" excludes the day the evidence is received; the day of the hearing; and any weekend days or statutory holidays in between.

As such, the latest the tenants could serve the landlord with their evidence was June 29, 2012 and as a result, I advised both parties I could not consider the tenants submitted evidence but that the tenants could speak to any of the evidence they submitted.

The landlord submitted verbally into evidence the decision issued by Dispute Resolution Officer (DRO) XXXXX of May 2, 2012 dismissing the tenant's Application for Dispute Resolution seeking two month's rent and return of the security and pet damage deposits. The tenant's total claim on that Application was for \$2,075.00.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord testified the tenancy began in May or June 2011 with only one of the tenants for a monthly rent of \$400.00 due on the 1st of each month and that he had paid a security deposit of \$100.00. The tenants testified that the tenancy began in January 2011 with the one tenant only with a monthly rent of \$550.00 due on the 1st of each month with a security deposit of \$275.00 paid.

The parties agree the two other tenants moved in to the rental unit in late December 2011 or early January 2012 and the rent was increased to \$800.00 per month still due on the 1st of each month. The landlord contends the new tenants paid a \$100.00 pet damage deposit but the tenants contend the new tenants paid a \$200.00 security deposit and a \$100.00 pet damage deposit.

From the decision of May 2, 2012, DRO XXXXXX wrote: "The tenancy began on January 01, 2011 when only one of the three tenants moved into the rental unit for a monthly rent of \$550.00. On January 01, 2012 the other two tenants moved in and the total rent increased to \$800.00."

The landlord submits the tenants moved out of the rental unit on or about February 13, 2012 and that when they failed to return to pick up the last of their belongings the landlord contacted the tenants and told them to pick it up or it would be placed in the driveway. The landlord submits that she took these additional steps on the advice of her police officer neighbour.

The tenants submit that they stopped staying at the rental unit as of February 19, 2012 and that when they returned to remove their belongings on February 28, 2012 the landlord had placed all of their belongings in the driveway and had changed the locks on the rental unit so the tenants were not able to enter the unit and clean it.

The landlord provided no evidence as to the condition of the rental unit at the start of the tenancy but did provide several photographs, some with a description written on the back, some without. The photographs include several close ups of flooring and baseboards that the landlord identifies as cat; guinea pig; and rabbit feces and/or urine; several close ups of a dirty fridge; dirty window sills; and damage to walls; and several with boxes and furniture on the patio.

The landlord seeks the following compensation:

Description	Amount
Door Replacement supplies	\$190.40
Painting and miscellaneous supplies	\$210.94
Drywall; drywall compound; ceiling fan	\$123.90
Repairs – labour – 30 hours @ \$25.00 per hour	\$750.00
Cleaning and Painting – 3 people	\$300.00
Total	\$1575.34

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Despite the landlord's submission of photographic evidence of the condition of the rental unit at the end of the tenancy the landlord has failed to provide any evidence of the condition of the rental unit at the start of the tenancy and since the tenants dispute the condition I find the landlord has failed to establish that any of the damage to the rental unit is a result of a violation of the *Act*, regulation or tenancy agreement.

As such, I dismiss the portions of the landlord's claim specifically for repairs including door replacement supplies; painting and miscellaneous supplies; drywall; drywall compound; ceiling fan; and repairs for labour.

I accept that the tenants did not stay at the rental unit at some point beginning in mid February 2012 but that they did, according to the *Act*, retain possession of the rental unit until February 29, 2012 and despite their claim that the landlord had changed the locks on the rental unit, I find the tenants have failed to establish that they took reasonable steps to gain access to clean the rental unit.

As a result, and in conjunction with the landlord's photographic evidence I find the tenants failed to comply with their obligations under Section 37 to leave the unit reasonably clean. As such, I find the landlord is entitled to compensation. However as the landlord's claim for cleaning of \$300.00 includes payment for painting as well, I find the landlord is entitled only to half the amount claimed for cleaning.

Despite the landlords submission of the costs of preparation and service of documents, the *Act* does not allow recovery of these costs in a dispute resolution proceeding and I dismiss any claims from the landlord for reimbursement of these costs.

As to the value of any security deposits or pet damage deposits, I find the onus of proving the amount of the deposits rests with the landlord. As the landlord states the deposits in total were \$200.00 without any documentary evidence to support these amounts and in the face of the tenant's assertion that they had paid a total of \$575.00, I find the landlord has failed to establish the amount of \$200.00.

I find, based on the balance of probabilities and the amount of rent the original tenant paid when he rented the unit as outlined in the decision of DRO XXXXX of May 2, 2012 that rent was originally \$550.00 it is likely the security deposit was \$275.00.

I also accept from the testimony of both parties that landlord required a \$100.00 for a pet damage deposit when the additional tenants moved in with their cat. However, I find that neither party has provided any evidence that the tenants were required to pay an additional security deposit when the additional tenants moved in.

Based on the above, I find the tenants paid security and pet damage deposits totalling \$375.00.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$150.00** for cleaning. As the landlord was largely unsuccessful in her claim I dismiss her claim to recover the \$50.00 fee paid by her for this application.

I order the landlord deduct the \$150.00 from the security deposit and pet damage deposit held in the amount of \$375.00 in satisfaction of this claim. I grant a monetary order to the tenants for the return of the balance of these deposits in the amount of **\$250.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants 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: July 09, 2012.

Residential Tenancy Branch