



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNSD
For the landlords: MNSD MND FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “*Act*”). The tenants applied for a monetary order for the return of double their security deposit. The landlords applied for a monetary order to keep all or part of the tenants’ security deposit.

The landlords and the tenants attended the teleconference hearing as scheduled. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties confirmed that they received the documentary evidence from the other party prior to the hearing and that they had the opportunity to review that documentary evidence. As a result, I find the parties were sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matters

At the outset of the hearing, the parties were advised that the landlords’ claim was being amended pursuant to section 64 of the *Act* to include a claim for damages to the rental unit as I find the landlords’ details of dispute clearly indicate that the landlords were seeking to keep the tenant’s security deposit towards damages to the rental unit. I do not find that this amendment would prejudice the tenants as I find the landlords’

application clearly indicated that the landlords were claiming for the damage caused by the tenants to the rental unit.

Furthermore, the landlords verbally requested the recovery of their filing fee which section 72 provides for under the *Act*. As a result, I will consider the landlords' request for the recovery of their filing fee if the landlords' application is found to have merit, which will be determined later in this Decision.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A fixed term written tenancy agreement was submitted in evidence. The fixed term tenancy agreement began on August 15, 2011 and reverted to a periodic, month to month tenancy after August 31, 2012. Monthly rent in the amount of \$950.00 was due on the first day of each month. A security deposit of \$475.00 was paid by the tenants at the start of the tenancy, which the landlords continue to hold.

The tenants are seeking the return of double their security deposit of \$475.00 for a total monetary claim of \$950.00. The landlords' are seeking a monetary amount of \$425.00 for damages to the rental unit and have requested to offset that amount from the security deposit, plus the recovery of their filing fee.

The parties agreed that the tenants vacated the rental unit on March 3, 2014. The parties also agreed that the landlords received the tenants' written forwarding address dated March 26, 2014 by registered mail on March 28, 2014. A copy of the registered mail tracking history report supports that the landlords signed for and accepted the registered mail package on March 28, 2014. The landlords applied for dispute resolution claiming towards the tenants' security deposit on April 7, 2014.

Regarding the landlords' claim for \$425.00 in damages which the landlord are seeking to retain from the tenants' security deposit, the parties agreed that an incoming condition inspection report was completed in accordance with the *Act*. The completion of the outgoing condition inspection report was disputed between the parties. I note that the outgoing condition inspection report submitted in evidence is not signed or dated by the parties and that only a portion of the document was completed by the landlords.

The landlords submitted four black and white photos in evidence. The two photos referred to by the parties during the hearing were the bathtub photo, referred to as "photo 1" during the hearing, and the bathtub surround photo, referred to as "photo 2". For ease of reference, the photos described above were flagged as photo 1 and photo 2 respectively.

In photo 1, the tenants agreed that they caused damage to the bathtub, resulting in a hole in the bathtub as shown in photo 1. The landlords testified that they were not claiming any monetary amount for the damage shown in photo 1 as the landlords were able to use enamel to repair the bathtub hole and decided not to charge the tenants for the enamel.

In photo 2, the tenants disagreed that they caused damage to the bathtub surround as shown in photo 2. The tenants testified that the damage shown in photo 2 was like that when they moved in. The landlords referred to the incoming condition inspection report submitted in evidence dated August 13, 2011, which supports that the tub/shower in the main bathroom was in good condition based on the code provided and agreed to by the tenants as the tenants both signed the incoming condition inspection report.

The landlords referred to the crack in the bathtub surround showing in photo 2. The landlords also referred to a receipt and an invoice submitted in evidence in support of their claim. The receipt is in the amount of \$111.99 for a "wall tub", which includes tax. The invoice is in the amount of \$438.90 to "remove and replace tub surround", which includes tax. The landlords testified that although the two amounts for the bathtub surround repair total \$550.89, the landlords were only seeking to retain \$425.00 of the total repair cost, plus the filing fee for a total of \$475.00.

The tenants confirmed that photo 2 was accurate in terms of the condition of the bathtub surround at the end of the tenancy. The landlords testified that they did not have any before photos of the bathtub surround that were taken at the start of the tenancy.

Analysis

Based on the documentary evidence, testimony, and on the balance of probabilities, I find the following.

Test for damages or loss

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 what was reasonable under the *Act* to minimize the damage or loss.

Tenants' claim for double their security deposit – Section 38 of the *Act*, requires that a landlord must return or make a claim against the security deposit within 15 days of the later of the end of tenancy date and the date the written forwarding address is provided by the tenant to the landlord. The tenancy ended on March 3, 2014. The parties agreed that the landlords had received the tenants' written forwarding address on March 28, 2014, when the signed for and accepted the registered mail package from the tenants. The landlords filed their application on April 7, 2014, claiming towards the tenants' security deposit in accordance with section 38 of the *Act* within the 15 day deadline of March 28, 2014, the latter of the two dates described above. Therefore, **I find** the landlords complied with section 38 of the *Act* by filing a claim within 15 days of the date they received the tenants' written forwarding address. As a result, **I find** the tenants are not entitled to the return of double their original security deposit under the *Act*. Therefore, the tenants' application is **dismissed, without leave to reapply**.

Landlords' claim for damages and to offset the amount from the tenants' security deposit - The landlords have claimed \$425.00 in damages and to offset that amount from the tenants' security deposit of \$475.00. The parties agreed that an incoming condition inspection report was completed in accordance with the *Act*; however, I find the outgoing condition inspection report was not completed in accordance with the *Act*. As a result, the landlords must provide a preponderance of evidence to prove that the tenants were responsible for the \$425.00 in damages being claimed.

There is no dispute that the tenants signed the incoming condition inspection report which indicates that the bathtub/shower in the main bathroom was in good condition. As a result, I prefer the evidence of the landlords over that of the tenants as the tenants' testimony that the bathtub surround was like that at the start of the tenancy is

contradictory to the incoming condition inspection report the tenants signed at the start of the tenancy.

I find that photo 2 submitted in evidence supports that there was a crack in the bathtub surround at the end of the tenancy. Section 37 of the *Act* applies and states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[my emphasis added]

Having considered the tenants' testimony which confirmed that photo 2 was an accurate photo of the condition of the bathtub surround at the end of the tenancy, and the receipt and invoice supporting a total repair cost of \$550.89, I find the tenants breached section 37 of the *Act* by failing to leave the rental unit undamaged and that the damage is not reasonable wear and tear. I find the landlords have met the burden of proof in supporting this portion of their claim for \$425.00 in damages and that the amount being claimed is reasonable given that the total repair cost was \$550.89. Therefore, **I grant** the landlords **\$425.00** in compensation for damages caused by the tenants to the bathtub surround.

As the landlords' claim did have merit, **I grant** the landlords the recovery of their filing fee in the amount of **\$50.00**.

The landlords continue to hold the tenants' security deposit of \$475.00, which has accrued no interest since the start of the tenancy. I find that the landlords have established a total monetary claim of **\$475.00** comprised of \$425.00 in damages, plus the \$50.00 filing fee. **I ORDER** the landlords to retain the tenants' full security deposit of \$475.00 in full satisfaction of the landlords' monetary claim.

Conclusion

The application of the tenants has been dismissed in full, without leave to reapply.

The landlords have established a total monetary claim of \$475.00 comprised of \$425.00 in damages, plus the \$50.00 filing fee. The landlords have been ordered to retain the tenants' full security deposit of \$475.00 in full satisfaction of the landlords' monetary claim.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 5, 2014

Residential Tenancy Branch

