



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants are seeking the return of double the security deposit. Both parties submitted and exchanged evidence in accordance with Section 89 of the Act and in accordance with the Rules of Procedure. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence and Analysis

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties made allegations of “liar and fraud” to each other. The parties were more intent on arguing with each other than answering questions or presenting their claim.

The tenancy began on April 1, 2012 and ended on August 1, 2014. The tenants were obligated to pay \$1500.00 per month in rent in advance and at the outset of the tenancy

the tenants paid a \$700.00 security deposit and a \$700.00 pet deposit. Condition inspection reports were not conducted at move in or move out.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Firstly, I address the landlord's claims and my findings around each as follows.

Landlords First Claim - The landlord is seeking \$1580.50 for the cost of kitchen cabinets. The landlord stated that he was awarded these cabinets as compensation from a previous arbitration hearing with the previous tenant in the subject unit. The landlord has not purchased any new cabinets at this time but feels that's a fair price to replace them.

The tenant disputes this claim. The subject tenant who was a witness in the said hearing the landlord is relying on; stated that he was not awarded the cabinets and that the previous tenant took them. The tenant stated that the landlord made up the story that they stole them and even after the police investigated he was told there was no merit to his complaint. In addition, the tenant stated the cabinets were old and worthless.

I find that the landlords testimony to be vague and not helpful. When asked the price the landlord offered a wide range of prices. Also, the landlord did not dispute that the police found no merit in his complaint and that the previous tenant was the one who in fact

took the cabinets back. The landlord has not satisfied me that the tenants stole the cabinets from him and that the cost to replace them is as he alleges. In addition, he has not purchased any cabinets and therefore has not suffered any “out of pocket costs”. Based on the above and on the balance of probabilities, I dismiss this portion of the landlords’ application.

Landlords Second Claim – The landlord is seeking \$4500.00 for a gas fireplace. The landlord has not replaced it at this time. The landlord stated that the tenants stole the item. The tenants dispute this claim. As in the previous claim; the tenants stated that the police investigated the landlords’ complaint and found no merit to it. The tenants stated that the gas fireplace was at least 20 years old and that it didn’t work. The tenants stated that the landlord advised them that “if you can lift it, you can get it out of the way”. The tenants stated that the landlord gave them \$20.00 for gas money to haul it away.

As in the previous claim, I found the landlords testimony less than compelling. He offered a wide range in prices for gas stoves and wasn’t able to provide clear or consistent details as to the stoves original cost or age. I find the testimony of the tenants to be more reliable in this regard. In addition, the landlord did not satisfy the four grounds as listed above as required, in fact he did not satisfy any of them. I dismiss this portion of the landlords’ application.

Landlords Third Claim – The landlord is seeking \$63.00 for carpet cleaning. The landlord stated that the tenants did not clean the carpets at move out and that the carpets had a heavy urine smell from the pets. The tenant disputes this claim. The tenant stated that she had family members help her clean the entire unit and that she had the carpets professionally cleaned.

Based on the disputing receipt from the tenant that shows she met her obligation under the Residential Tenancy Policy Guidelines to shampoo the carpets at move out; I dismiss this portion of the landlords’ application.

Landlords Fourth Claim – The landlord is seeking \$120.82 for the cost of new locks and \$108.00 for his gas and time to go buy them. The landlord submitted receipts to support his claim. The landlord stated that due to the tenants stealing items out of the unit and that they didn't return the keys, he felt it was necessary to change the locks. The tenants dispute this claim. The tenants stated that all keys were returned within one hour of the final move out and that there is no proof to support the landlords' allegation of theft.

The landlord did acknowledge that he did receive all but one of the keys shortly after the final move out; to which the tenant states he's lying. The tenant stated that the landlord did in fact receive all the keys. The landlord has failed to provide any proof of theft in any of his claims. The landlord has failed to provide sufficient evidence that the changing of the locks were necessary and that the tenants should be liable for that cost. Based on the above I dismiss this portion of the landlords' application.

Landlords Fifth Claim – The landlord is seeking \$127.82 for the replacement of weather stripping. The landlord stated that the tenants' pets damaged the weather stripping on many of the doors in the unit. The tenants dispute this claim. The tenants stated that the weather stripping was damaged before they moved in to the unit. Also, the photos submitted by the landlord depicting "many doors" are of the same door from different angles.

It was explained in great detail to the landlord the vital and useful nature of the inspection report. I find that in the absence of a documented move in Condition Inspection Report or other documentary evidence to confirm the condition at the start of the tenancy the landlord has not provided sufficient evidence to support that the tenants caused any damage to the rental unit. I dismiss this portion of the landlords' application.

Landlords Sixth Claim – The landlord is seeking \$619.68 for a damaged sink. The landlord has not replaced or repaired the sink but stated the tenants caused the damage. The landlord is relying on photos sent to him by the subject tenants. The

tenant disputes this claim. The tenant states those same photos actually support her position of not being responsible for the damage. I find that in the absence of a documented move in Condition Inspection Report or other documentary evidence to confirm the condition at the start of the tenancy the landlord has not provided sufficient evidence to support that the tenants caused any damage to the rental unit at all. I dismiss this portion of the landlords' application.

Landlords Seventh Claim- The landlord is seeking \$295.00 for an auger motor, tail piece, and panel cover, \$145.75 for paint and toilet seat, \$72.76 for bi-fold doors and parts, and \$80.00 for cleaning a pellet stove. The landlord stated that all of these items needed to be replaced, repaired, or serviced due to the negligence and misuse by the tenants. The landlord submitted receipts for these items to support his claim. The tenants disputed this claim. The tenants stated that the landlord is trying to make them pay for items that should have been maintained or repaired throughout their tenancy. The tenants stated that some of the items are dated but functional but the landlord is trying to upgrade things at their expense.

I find that in the absence of a documented move in Condition Inspection Report or other documentary evidence to confirm the condition at the start of the tenancy the landlord has not provided sufficient evidence to support that the tenants caused any damage to above items. I dismiss this portion of the landlords' application.

Landlords Eighth Claim – The landlord is seeking \$2350.00 for cleaning and painting the unit. The landlord stated that the unit required 117.5 hours of work x \$20.00 per hour = \$2350.00. The landlord stated that he wasn't sure when the suite had last been painted but stated that it now required it and that the tenants use of the unit far exceeded normal wear and tear. The landlord stated that his fiancé conducted all of the work. The tenants dispute this claim. The tenants stated that the landlord is once again trying to upgrade the unit at their expense. The tenants stated that the unit may very well be due for a paint job but only because it hasn't been done for so many years and not due to damage or excessive wear. The tenants stated that they also challenge the

landlords' claim that of the 117.5 hours, 20 hours was for cleaning. The tenants renewed their position that they left the unit very clean and that this is an exaggeration on the part of the landlord.

As noted at the outset of these claims, the applicant bears the responsibility to prove their claim. As noted in many of the landlords claim, there is a distinct and regular lack of documentation such as clear and helpful photos at the start of the tenancy or receipts to show that items were repaired, purchased or replaced. I find that in the absence of a documented move in Condition Inspection Report or other documentary evidence to confirm the condition at the start of the tenancy the landlord has not provided sufficient evidence to support that the tenants caused any damage to the rental unit at all. I dismiss this portion of the landlords' application.

I will deal with the tenants claim and my findings as follows:

Tenants First Claim – The tenants are seeking the return of double the security deposit. Both parties agree that the tenancy ended on August 1, 2014. The landlord filed for dispute resolution on August 13, 2014. As per Section 38(1) of the Act the landlord has applied within the legislated 15 days of a tenancy ending or after receiving the tenants forwarding address, whichever the later and therefor the doubling provision does not apply. I dismiss the tenants claim for the return of double the security deposit. However, as the landlords' application has been dismissed in its entirety the tenants are entitled to the return of their \$700.00 security deposit and the \$700.00 pet deposit.

As neither party has been completely successful in their application I decline to make a finding in regards to the filing fee and each party must bear that cost.

Conclusion

The landlords' application is dismissed in its entirety.

The tenant has established a claim for \$1400.00. I grant the tenant an order under section 67 for the balance due of \$1400.00. Should it be necessary .This order may be filed in the Small Claims Court and 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: April 24, 2015

Residential Tenancy Branch

