



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF; MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits ("deposits") in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for their application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application against landlord GJ ("landlord") only, pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the deposits, pursuant to section 38; and
- authorization to recover the filing fee for their application from the landlord, pursuant to section 72.

The landlord and the two tenants attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to speak on behalf of her husband, the other landlord, AJ, named in this application, as an agent at this hearing. This hearing lasted approximately 91 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Issues to be Decided

Are the landlords entitled to a monetary award for damage arising out of this tenancy?

Are the landlords entitled to retain the tenants' deposits in partial satisfaction of the monetary award requested?

Are the tenants entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to a monetary award equivalent to double the value of their deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

The landlord confirmed that this tenancy began on May 1, 2013 and ended on April 18, 2015. Monthly rent in the amount of \$1,850.00 was due on the first day of each month. A security deposit of \$925.00 and a pet damage deposit of \$925.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was provided for this hearing.

The landlord testified that she completed move-in and move-out condition inspection reports without the tenants present, both of which were completed after the tenancy was over on April 18, 2015. The landlord confirmed that a written forwarding address was provided by the tenants on April 18, 2015, by way of email. The tenants stated that they sent a written forwarding address by way of registered mail on April 20, 2015. The tenants provided a registered mail receipt to confirm service with their application. The tenants stated that the landlord did not retrieve her mail, as per the Canada Post website tracking number for their package. The landlord confirmed that she did not have written permission from the tenants to retain any portions from their deposits. The landlord confirmed that an application was filed by the landlords on April 30, 2015, to retain the tenants' deposits.

The landlords seek \$1,850.00 in damage costs as well as the \$50.00 filing fee for their application. The landlord confirmed that the landlords were no longer seeking any costs to replace the stove top or the stove in the rental unit. The landlord confirmed that Included in the \$1,850.00 for damages are the following costs: \$1,585.00 for repairing, preparing and painting the walls and baseboards; \$16.79 for purchasing a vinyl window blind; \$10.84 for purchasing spackling for wall repairs; \$12.26 for purchasing mudding tape for wall repairs; \$15.48 for purchasing silicone for baseboard repairs; and \$215.00 for the labour for baseboard repairs. The landlord provided invoices and receipts for all of the above costs, except for the \$215.00 in labour. The landlord also provided photographs of damages to the rental unit. The tenants dispute all of the above costs with the exception of the \$10.84 spackling for wall repairs and \$12.26 for mudding tape for wall repairs, which they agree they owe the landlord.

The tenants seek double the value of their deposits, totaling \$3,700.00, plus \$16.54 in registered mail fees and \$50.00 for the filing fee for their application.

Analysis

Landlords' Application

Section 67 of the *Act* states that when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove damage and loss, the landlords 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 tenants 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 landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords \$10.84 for the purchase of spackling for wall repairs and \$12.26 for the purchase of mudding tape for wall repairs, as the tenants agreed to these costs during the hearing.

I award the landlords \$16.79 for the purchase of a vinyl blind to replace a damaged blind for the patio door. The landlords provided a receipt for this cost as well as a photograph showing the damage. Both parties agreed that they discussed the damaged blind during a visual move-out inspection. The landlord stated that the blind

was not damaged when the tenants moved in. The tenants claim that the blind was damaged when they moved in and they did not complain about this to the landlord because they did not care, it did not bother them and they left the blinds in the downward position. I find that the landlords are entitled to this cost because the tenants failed to report the damaged blind to the landlord during the tenancy such that the landlord could have inquired into the situation further to determine the cause at that time. This is particularly so given the tenants' claim that the blind was damaged when they moved in and the fact that they sent the landlord an email on May 29, 2013, regarding other damages in the rental unit but failing to mention the damaged blind.

I award the landlords \$15.48 for purchasing silicone for baseboard repairs in the rental unit. The landlord provided a receipt for this amount. The landlord also provided photographs to show damages to the baseboards in the living room and the guest bedroom. The tenants deny that they caused this damage, claiming that the baseboards were damaged when they moved in and the tenants alerted the landlord. The tenants stated that any additional damage to the blinds is reasonable wear and tear or was caused by restoration workers who repaired water damage due to flooding in the rental unit. The tenants stated that there were approximately five restoration workers in the unit, moving industrial fans, that may have caused this damage to the baseboards. The tenants provided an email, dated May 29, 2013, indicating "the floor bored [sic] in the master bedroom is not nailed in the wall behind the wardrobe." This email does not discuss the baseboards in the living room and the guest bedroom, which the landlord claimed required repairs and for which the landlord provided photographs. In any event, I find that the tenants' explanation of damage caused by restoration workers to be implausible, as workers moving industrial fans would likely not detach baseboards to the extent as shown in the landlord's photographs. In any event, if any such damage was caused, it should have been reported by the tenants to the landlord in January 2015, when the tenants said the restoration workers were in the rental unit. I also find that such damage is not reasonable wear and tear. Accordingly, I find that the tenants are responsible for the baseboard repairs in the living room and guest bedroom and that the silicone purchase was required, even if the tenants are not responsible for the baseboard damages in the master bedroom as per their email to the landlord.

I award the landlords \$1,000.00 for the repair, preparation and painting of the walls and baseboards in the rental unit. I find that this is a reasonable amount for the wall and baseboard damages demonstrated by the landlords in their photographs. As noted above, I found that the tenants were responsible for baseboard damages in the living room and guest bedroom. I find that the tenants notified the landlord of damages to the baseboards in the master bedroom at the beginning of this tenancy and I have included a deduction for baseboard repairs and baseboard painting in this room.

I have also reduced the landlord's claim for painting the walls in the rental unit, as the landlord failed to demonstrate significant painting was required beyond reasonable wear and tear. The landlord provided very few photographs of the walls in the rental unit when the tenants moved in and it was difficult to discern the condition of the walls at that time. The photographs of the damage to the walls when the tenants moved out were limited and did not show the general condition of the walls, but rather close-up photographs of various areas of minor damage. I did not find the letter from the former tenant, "JV," submitted by the landlords, to be particularly helpful to the landlords' claim. This letter was not signed and JV did not testify at this hearing to authenticate the letter. The letter also did not indicate when JV last painted the walls in the rental unit. The tenants admitted that they hung photographs on the walls, causing holes in the walls, but noted that these were small areas. The landlord disputes the tenants' claim that the appropriate colours of paint were left in the rental unit, such that she could use these same colours to repair the walls. I find that the landlord was required to pay for materials and labour to have painting completed due to the nail holes and other minor damage in the rental unit. I find the above reduced amount to be more reasonable than the \$1,585.00 claimed by the landlords, for the reasons stated above.

I dismiss the landlords' claim for \$215.00 in labour for the baseboard repairs, as no receipt was provided. I find that the landlords failed part 3 of the above test.

As the landlords were mainly successful in their application, I find that they are entitled to recover the \$50.00 filing fee paid for their application.

Tenants' Application

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the tenants are entitled to double the value of their damage deposit. The landlords filed their application on April 30, 2015, within 15 days of the tenants providing a forwarding address in writing. I accept that the tenants provided a written forwarding

address by way of registered mail on April 20, 2015, as they provided a receipt for this service. I find that although the landlords did not pick up the package, it is deemed received by the landlords on April 25, 2015, five days after the registered mailing, as per section 90 of the *Act*. However, the landlord's right to claim against the deposits for damage was already extinguished under sections 24 and 36 of the *Act*, as the landlord did not complete move-in or move-out condition inspection reports with the tenants, as required by the *Act*. The landlord completed both reports on her own, after the tenancy ended, contrary to the *Act*. Accordingly, Residential Tenancy Policy Guideline 17 requires me to double the value of both deposits, totaling \$1,850.00. As such, I find that the tenants are entitled to \$3,700.00.

As advised to the tenants during the hearing, they are not entitled to recover \$16.54 in registered mail fees relating to their application, as the only hearing-related fees recoverable under section 72 of the *Act* are for filing fees. Accordingly, this portion of the tenants' application is dismissed.

As the tenants were successful in their application, they are entitled to recover the \$50.00 filing fee paid for their application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,644.63 against the landlord GJ only, as the application was only made against this one landlord, as follows:

| Item | Amount |
|---|------------|
| Return of Double Deposits to Tenants as per section 38 of the <i>Act</i> ($\$1,850.00 \times 2 = \$3,700.00$) | \$3,700.00 |
| Recovery of Filing Fee for Tenants' Application | 50.00 |
| Landlords' vinyl blind purchase | -16.79 |
| Landlords' silicone purchase for baseboard repairs | -15.48 |
| Landlords' spackling purchase for wall repairs | -10.84 |
| Landlords' mudding tape purchase for wall repairs | -12.26 |
| Landlords' repair, preparation and painting of walls and baseboards | -1,000.00 |

| | |
|---|-------------------|
| Recovery of Filing Fee for Landlords' Application | -50.00 |
| Total Monetary Award | \$2,644.63 |

The tenants are provided with a monetary order in the amount of \$2,644.63 in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: October 14, 2015

Residential Tenancy Branch

