



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF; MNSD, OLC, FF

Introduction

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

- authorization to retain a portion of the tenant's security deposit in full satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for her application, pursuant to section 72.

The two landlords and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 48 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.

At the time of the hearing, I had not yet received the landlords' coloured photographs, which the tenant had received. However, I received the landlords' coloured photographs after the hearing and considered them in my decision.

Issues to be Decided

Are the landlords entitled to retain a portion of the tenant's security deposit in full satisfaction of the monetary order requested?

Is the tenant entitled to obtain a return of double the amount of the security deposit?

Is the tenant entitled an order requiring the landlords to comply with the *Act, Regulation* or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2014 and ended on October 31, 2015. Monthly rent in the amount of \$825.00 was payable on the first day of each month. A security deposit of \$400.00 and a pet damage deposit of \$200.00 were paid by the tenant and the landlords returned the pet damage deposit to the tenant. The tenant provided a forwarding address in writing to the landlords on October 31, 2015. The landlords did not have written permission from the tenant to keep any amount from her security deposit.

Both parties agreed that move-in and move-out condition inspection reports were completed for this tenancy but the tenant was not present during the move-out inspection so the landlords completed the move-out condition inspection report on their own. The landlords said that they provided two opportunities by email and verbally to the tenant to perform the move-out condition inspection but they did not complete a Residential Tenancy Branch ("RTB") form offering a final opportunity to perform a move-out inspection. The landlords said that they filed their first application to retain the security deposit on October 31, 2015, after the tenant vacated the rental unit and provided a forwarding address. The landlords provided a credit card statement showing that they paid a filing fee on that date. The landlords said that they never received a notice of hearing after filing their first application so they filed a new one on January 22, 2016.

The landlords seek a monetary order of \$150.00 plus the \$100.00 filing fee for their Application. The landlords seek \$55.53 total to rent a carpet cleaning machine and to purchase shampoo for the carpet cleaning. The landlords said they spent \$44.35 for the machine rental and \$61.18 for the shampoo and then received \$50.00 back from their deposit. The landlords provided receipts for the above items. The tenant agreed

to pay the landlords \$55.53 during the hearing, stating that she did not steam clean the carpet as she was required to do.

The landlords also seek \$6.72 for cleaning supplies and \$87.75 for 3.5 hours of labour at a rate of \$15.00 to \$20.00 per hour for four family members to clean the carpet and other areas of the rental unit. The landlord said that the basement windows had to be cleaned because the tenant's cat's fur was in that area, that the appliances had to be scrubbed, that the stove top burners were dirty, the bathroom walls had stains and the toilet had to be cleaned. The tenant agreed to pay a total of \$43.47 for the above charges, stating that only the carpet had to be cleaned, as she cleaned the remainder of the rental unit. The tenant questioned why four people were required to clean the unit for 3.5 hours.

The tenant seeks the return of double the amount of her security deposit, totaling \$800.00, and the \$50.00 filing fee paid for her application.

Analysis

Landlords' Application

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a 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 tenant 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 \$55.53 to rent a carpet cleaning machine and to purchase shampoo for the carpet cleaning. The tenant agreed to pay this amount during the hearing.

I award the landlords \$43.47 of the \$94.47 sought for the cleaning supplies and the labour costs for cleaning the entire rental unit. The tenant agreed to pay the above amount. The landlords did not provide a receipt for the \$6.72 cleaning supplies cost, as required by part 3 of the above test. I also find that the landlords did not provide a sufficient explanation to justify the labour amounts claimed or why four people were required to clean for 3.5 hours. The landlords said that they were charging a range from

\$15.00 to \$20.00 per hour for each person, but the above numbers do not add up for four people at 3.5 hours each. I find that the landlords' photographs do not show that excessive cleaning was required, as only minor dirt and other wear and tear were present. I find that the landlords failed to meet the entire four-part test above. Therefore, I only award the amount that the tenant agreed to pay.

As the landlords were only partially successful in their application, solely due to the tenant's agreement to pay the above amounts, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

Tenant's Application

Section 38 of the *Act* requires the landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, 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 landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of both parties at this hearing. The tenancy ended on October 31, 2015 and the tenant provided a written forwarding address on the same date. The tenant did not give the landlords written permission to retain any amount from her security deposit. The landlords did not return the security deposit in full. I accept that the landlords first filed their application to retain a portion of the deposit on October 31, 2015, and that an administrative error caused them to refile again in January 2016.

However, I find that the landlords have not offered two opportunities to the tenant to complete a move-out inspection in accordance with section 35(2) of the *Act*. Section 17(2)(b) of the *Regulation* requires that the landlords provide a second opportunity for a move-out condition inspection by giving the tenant a notice in the approved RTB form. The landlords testified that they did not provide the tenant with the proper RTB form to offer a final opportunity for a move-out condition inspection. For the reasons indicated above, I find that the landlords' right to claim against the security deposit is extinguished by section 36(a) of the *Act*. This section states that the landlords cannot claim against

the security deposit for damage to the rental unit if they have not provided two opportunities to the tenant to complete a move-out condition inspection.

Over the period of this tenancy, no interest is payable on the landlords' retention of the tenant's security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of her security deposit, totalling \$800.00 minus the monetary award that was issued to the landlords at this hearing. As the pet damage deposit was returned to the tenant, I do not make any orders doubling the pet damage deposit. Accordingly, the tenant does not require an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, as a monetary order has been issued to the tenant.

As the tenant was successful in her application, I find that she is entitled to recover the \$50.00 filing fee from the landlords.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$751.00 against the landlords. The landlords must be served with this Order as soon as possible. Should the landlords 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.

The landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The tenant's application for an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement is not required.

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 14, 2016

Residential Tenancy Branch