



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants' applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party via Canada Post Registered Mail. No issues were raised regarding service. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order to retain the security and pet damage deposits for claims of damage or loss and recovery of the filing fee?

Are the tenants entitled to a monetary order for return of double the security and pet damage deposits and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on February 1, 2009 on a fixed term tenancy for 1 year ending on February 1, 2010 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated February 1, 2009. The monthly rent was \$1,250.00 payable on the 1st day of each month. A security deposit of \$625.00 and a pet damage deposit of \$625.00 were paid. A condition inspection report for the move-in was complete by both parties on February 1, 2009. Both parties confirmed that the tenancy ended on September 30, 2016. The landlord confirmed that the tenant provided their forwarding address in writing on October 1, 2016.

The landlord stated that she suffered a loss for diminished value on the sale of the rental property due to the actions or neglect of the tenants. The landlord stated that the property was sold "as is". The landlord seeks a claim for the tenant leaving the rental property dirty and damaged for losses for:

\$900.00	Cleaning
\$500.00	Damages, drywall, patio screen door and carpets

The landlord clarified that she understands that her items of monetary claim exceed the amount applied for and is limiting her claim to this amount in offsetting the held security and pet damage deposits.

The tenants also seek a monetary claim for return of double the security and pet damage deposits as the landlord has failed to repay them within the allowed time.

The landlord claims that the tenant vacated the rental unit leaving it dirty and damaged requiring cleaning of the pet stains in the master bedroom carpet and outside of all of

the windows and window screens. The landlord stated that she had to clean over a 3 day period for approximately 20 hours. The landlord seeks compensation of the 20 hours of cleaning at \$25.00 per hour. The tenants dispute this claim stating that the rental property was left clean. The landlord's witness stated that he had viewed the landlord cleaning the property over the 3 day period. The tenant's witness stated that she had assisted the tenant in cleaning the property prior to returning possession of the property to the landlord.

The landlord also claims that the tenant left the property with damages of:

- Damaged screen on patio door
- Nail/pin holes on wall
- Hole in wall due to animal gate
- Burnt out lightbulbs

The landlord stated that none of the damage were fixed as the house was sold "as is". The landlord stated that based upon her "experience" the estimated cost of repairing the drywall would be \$250.00 along with \$100.00 for replacing the screen on the patio door. The tenant confirmed that the walls were left with nail/pin holes and that the screen on the patio door was damaged, but the tenant disputes the amounts claimed by the landlord for the cost of replacement.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the affirmed evidence of both parties and find that the landlord has failed to establish her claim for the \$900.00 cleaning claim. I find that although the landlord has provided some evidence that the rental property was left dirty, the landlord has failed to provide sufficient evidence on the amount claimed. The landlord provided limited details on the amount of hours worked in cleaning and also failed to provide sufficient

details of the cleaning of the property. However, I prefer the evidence of the landlord over that of the tenants in this regard that the property was left dirty. Based upon the submitted detailed photographs of the landlord, I grant a nominal award to the landlord for cleaning of \$250.00.

I find that although the tenants do not dispute that the rental property was left “as is”, the landlord has failed to establish a claim for the \$500.00 in damages. The landlord has provided details for drywall damage of \$250.00, drywall bead damage of \$250.00 and \$100.00 for screen replacement on a patio door without any invoices or receipts. The landlord relies upon her “experience”. The landlord does not base these amounts on any actual costs suffered as the rental property was left and sold “as is” without any of these items repaired or replaced. The landlord states that the \$500.00 claim is part of the negotiated diminished value, but is unable to provide any evidence to support this claim amount. The landlord provided affirmed testimony that the price of the property was negotiated with the purchaser and no details were listed for these noted deficiencies on the sale agreement. As such, I find that the landlord has failed to establish the monetary claim for damages. This portion of the landlord’s claim is dismissed.

Section 38 of the Act requires the landlord to either return all of a tenant’s security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

Both parties confirmed that the tenancy ended on September 30, 2016 and that the tenants provided their forwarding address in writing on October 1, 2016. A review of the landlord’s application shows that the landlord had applied to dispute the return of the security and pet damage deposits on October 8, 2016. Based upon the above agreed upon facts the landlord has complied with the Act by applying for dispute of the security and pet damage deposits within the allowed timeframe. As such, the tenants are not entitled to compensation under section 38 (6) of the Act.

The landlord has established a total monetary claim of \$250.00.

In off-setting these claim, I authorize the landlord to retain \$250.00 from the \$1,250.00 combined deposits. The remaining portion of \$1,000.00 is to be returned to the tenants.

As both parties have been partially successful in their applications, I decline to make any orders regarding the recovery of the filing fees. Each party shall bear the cost of their own filing fee.

Conclusion

The tenants are granted a monetary order for \$1,000.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: April 13, 2017

Residential Tenancy Branch