



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on March 1, 2018. The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- 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; and,
- to recover the cost of the filing fee.

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written 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.

Issues to be Decided

- Are the Landlords entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested?

Background and Evidence

During the hearing, the Landlords testified the following:

They currently hold the Tenant's security/pet deposit of \$1,250.00. Items 1-4 on the Monetary Order Worksheet are for painting costs they incurred to re-paint the rental unit

after the end of the tenancy. The Landlords stated that the rental unit smelled like dog urine. They further stated that they hired cleaners to come and clean the property, but they could not get rid of the pet smell, so they had to repaint the unit. The painting and supplies cost them \$334.84, as per the receipts they provided.

Item #5 on the Monetary Order Worksheet represents the cost to replace the lock on the garage door. The Landlords stated that they never got the key back from the Tenant at the end of the tenancy, so they had to replace the lock. This cost \$33.11.

Item #6 on the Monetary Order Worksheet is for cleaning services because of the mess left by the Tenant. The Landlords provided photos of some of the mess left behind. These photos show some dust, spills, and debris. The Landlords provided an invoice from the cleaning company which is for \$600.00 for 15 hours of cleaning. In the letter from the cleaning company, it states that there was a smell of dog urine and a musty smell. The cleaner stated that she felt the dog smell had seeped into the flooring and that an "ozonator" would be helpful.

Item #7 on the Monetary Order Worksheet is for the replacement cost for a washing machine that broke down. The Landlords stated that the Tenant's washing machine in her unit broke down, and they were in the process of buying a replacement when the Tenant bought her own and installed it. The Landlords stated that they did not know how old the washing machine was because it was there when they bought the house. However, the Landlords want \$250.00 for the machine because they should have had the chance to fix it.

These 7 items on the Monetary Order Worksheet total \$1,217.97 and the Landlords are requesting to retain this from the deposits they hold.

The Tenant testified the following:

She has been a tenant at the rental unit for about 2 years. The current Landlords bought the house and issued her a 2-month notice to take over possession of her unit. She stated that the new owners never did a walk-through or a condition inspection. She also stated that the rental unit was painted about two years ago. The Tenant stated that she cleaned the place meticulously before she left, and there is no way it is as bad as the Landlords are stating.

The Tenant stated that sometime in the spring of 2017, the washing machine stopped working, and she had it repaired. She stated that the washing machine was smoking,

and making really loud noises. She also stated that the washing machine is very old, and is at least 20 years old. The Tenant further stated that when the washing machine broke again in the fall of 2017, she told the Landlord and he expressed that he would replace it. The Tenant stated that the Landlord stated that he was going to look for another one, but in the meantime, she obtained one at her own expense and had it installed. She stated that the old machine was put outside and she told the Landlord to come and look and see if he wanted to do anything with it but he never came by. The Tenant stated that she paid to get rid of it, and thought the issue was resolved because she had paid out of her own pocket to replace the machine, and dispose of the old one.

The Tenant stated that when she moved into the unit, she was never given a key to the garage, so it is not fair of the Landlords to ask for her to replace that. She pointed out that the Landlords never did a condition inspection report either.

The Tenant provided several letters from people she knows to support that she kept her place in good shape, and that it didn't smell like dog. The Tenant provided photos of her area where she kept her dog which show that it is clean and well organized, and had several protective layers in case anything was spilled. The Tenant also provided a letter from the previous owner which stated that she was a good tenant, and kept the place in good condition. He also stated that whenever he visited he was satisfied with the premises, despite there being dogs there. The previous landlord stated that the Tenant often went above and beyond and took care of the rental unit herself.

Analysis

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

In this case, the Landlords bear the burden of proof to show that they are entitled to retain the Tenant's security deposit to offset damage caused by the Tenant.

With respect to the painting of the rental unit, I note that the Landlords spent \$334.84 on painting and supplies. The Landlord stated that they repainted to try to get rid of the smell of pet urine. However, I find there is insufficient evidence that repainting of the rental unit would actually solve this issue, or that it was required. The letter from the cleaner stated that the source of the smell was likely the flooring. I decline to award any amount for the cost of the painting.

With respect to the lock on the garage door, I find the Landlords have provided insufficient evidence that the Tenant was ever provided with a key to the door in the

garage. The Tenant stated that they were never given one from the previous Landlord and pointed out that there is no documentation showing this key was ever given to her. Ultimately, I decline to award the Landlords any amount for this item.

With respect to the washing machine, I note that the Landlords did not know how old the washing machine was at the time it broke. The Tenant expressed that the machine was at least 20 years old, and had a history of malfunctioning (and smoking). Policy Guideline # 40 – Useful Life of Building Elements states that the useful life of a washing machine is 15 years. The Landlord was unsure about how old it was, and the Tenant stated it was well over 15 years old and had major issues. I find the Landlord has provided insufficient evidence that the washing machine was still within its useful life expectancy. I find the Landlord is not entitled to any compensation for this machine, given its age, and given that it appeared the Landlord was looking to replace the machine with a different one (which indicates the Landlord acknowledged the machine was likely past its useful life). I also note the Tenant went out and purchased her own without asking for the Landlords to reimburse her.

With respect to the Landlord's claim for cleaning, both parties have provided evidence to support their case. The Landlord has provided a letter from the cleaner stating the rental unit smelled like dog urine, and was dirty. However, the Tenant has provided evidence to the contrary from people who have been guests of hers. Ultimately, the parties disagree on whether or not there was a smell of dog urine. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, I find the Landlords have provided insufficient evidence to support that there was a smell of dog urine to the extent they have alleged. I decline to award the Landlords the full amount of \$600.00 for cleaning. However, I note that the Landlord has provided photos to show that the Tenant failed to fully clean up prior to leaving (dust on fan, splatters on surfaces, toilet not clean, dog hair/debris under stove). Given that there were some items left not properly cleaned, I find the Landlords are entitled to a nominal amount of \$150.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlords were partially successful with their application, which cost them \$100.00 to file, I order the Tenant to repay half of the fee that the Landlords paid to make application for dispute resolution.

In summary, the Landlord is entitled to \$150.00 in compensation for cleaning, plus \$50.00 for half the cost of this application, which totals \$200.00. Since the Landlord holds \$1,250.00 in security and pet deposit from the Tenant, I order the Landlord to return the balance of \$1,050.00 to the Tenant. I will also issue the Tenant a Monetary Order for this amount, in case the Landlord fails to return the remainder of the deposits held.

Conclusion

The Tenant is granted a monetary order in the amount of **\$1,050.00**, as specified above. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: March 5, 2018

Residential Tenancy Branch