



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 was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for damage to the rental unit pursuant to section 67;
- 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 the filing fee for this application from the tenant pursuant to section 72.

Tenant:

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

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenants acknowledged receipt of the landlord’s application for dispute resolution including the amended application and evidence on file. The landlord acknowledged service of the tenants’ application and evidence on file.

Issues

Is the landlord entitled to a monetary award for compensation for damages?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested or are the tenants entitled to a return of the deposit including double the amount?

Are the tenants entitled to compensation for loss?

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

Background & Evidence

This tenancy began on June 15, 2012 and ended on April 27, 2018. The tenants paid a security deposit of \$700.00 at the start of the tenancy which the landlord continues to hold. The tenants also paid a deposit of \$150.00 for 2 key fobs and a \$40.00 deposit for 2 parking passes also being retained by the landlord.

A move-in condition inspection report was completed on June 19, 2012. A move-out condition inspection report was completed by the landlord on April 27, 2018 in the absence of the tenants. The landlord testified that tenant N.H. attended the move-out inspection as scheduled however she did not feel comfortable as the tenant was acting irrational and she was alone so she asked him to leave. Tenant N.H. confirmed that he attended the inspection and submits that it was the landlord that was not acting professionally and that she kicked him out before completing the inspection. Tenant S.H. submit that no attempts were made by the landlord to reschedule the inspection on another date. S.H. submits the landlord could have rescheduled the inspection with her if she didn't feel comfortable with N.H.

A forwarding address was provided by the tenants by e-mail on April 27, 2018 and in writing on September 6, 2018.

The landlord is claiming the tenants damaged the bathroom countertop and left it badly stained. The landlord testified the counter cannot be repaired and needs to be replaced. The landlord submitted pictures in support of the alleged damage and invoices for the quotation to replace the counter top as well as a separate quote for the plumbing invoice to remove and reinstall the sink. The landlord submits that the move-in condition report had no indication of any damage to the countertop. The landlord first testified the countertop is 7-8 years old and then later said it is 10-12 years old.

The landlord is claiming the tenants damaged the blinds on the balcony door which were new at the start of the tenancy 6-7 years ago. The landlord submitted a receipt and picture and again refers to the move-in report.

The landlord is claiming the tenants patched up various small holes in the walls and the entire unit needed to be repainted. The landlord is only charging the tenants for a portion of this expense. A receipt was submitted. The landlord testified that she did not submit pictures as the holes and patches left were so small that did not show up in pics.

The landlord is claiming costs associated with photocopying and mailing documents for this hearing.

The landlord is claiming the tenants only returned one fob at the end of the tenancy which was broken. A picture was submitted. The landlord testified the tenants were provided new fobs at the beginning of the tenancy. The landlord is also claiming the tenants only returned one parking pass which was also damaged. A pic was provided.

The tenants testified that the move-in condition report documents stains on the countertop. The tenants testified that "stains" is recorded under the heading for main bathroom "sink" and no separate area was provided for the countertop. The tenants submit they could have been more specific on the report. The tenants submit that the wear on the countertops was present at the start of the tenancy and is just normal wear and tear. The tenants submit that the building was built in 2004 and is now 14 years old.

The tenants testified that the damage to the blinds was just wear and tear over the 6 year tenancy and that there was damage recorded to the patio door in the move-in report.

The tenants testified that there were only 6 small holes in the living room area and no holes in the bedroom. The tenants testified that they patched the holed and they offered to paint them but the landlord said to leave them.

The tenants testified that both the key fobs and parking passes were returned and placed on the counter at the time of the move-out inspection. The tenants submit that the landlord made no attempts to contact the tenants after the tenancy to request these items which would be expected had they not been returned as alleged.

In reply, the landlord argues that the move-in report only referred to a stain on the sink area and not the countertop. The landlord argues that the damage to the countertop is not just a stain but rather some sort of chemical reaction.

The claims made in the tenants' application are for the return of the security deposit as well as the key fob and parking pass deposits. The testimony and evidence of the parties in relation to these claims has been covered above.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

Pursuant to section 35 of the Act, the landlord and tenant together must inspect the condition of the rental unit at the end of the tenancy and the landlord must offer the tenant at least 2 opportunities, as prescribed in the Regulation, for the inspection. The landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. The landlord may make the inspection and complete and sign the report without the tenant the landlord has provided 2 opportunities, as prescribed, and the tenant does not participate on either occasion, or the tenant has abandoned the rental unit.

Pursuant to section 36 of the Act, unless a tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not 2 opportunities for an inspection as per section 35 or having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find the landlord has provided insufficient evidence that the tenants caused the damage to the countertop. The move-in condition report documents various areas of the rental unit as being "stained" and "dirty" at the start of the tenancy including the bathroom sinks, cabinets, tub and shower. The report also does not include a separate section for the countertops. I find that on a balance of probabilities it is likely that this damage was pre-existing and was just not specifically identified in the move-in condition report. The landlord's claims for damage to the countertop including the plumbing quote for removing the sink is dismissed.

I accept the landlord's testimony that the blinds were new at the start of the tenancy and that they were left damaged at the end of the tenancy. The picture submitted by the landlord supports the blinds to be damaged beyond normal wear and tear. However these blind were 6-7 years old only have a useful life of 10 years as per Residential Tenancy Branch Policy Guideline #40. I award the landlord 30% of this claim for an award of **\$13.28**.

I find the landlord has provided insufficient evidence in support of the claim for the painting expense. The landlord did not submit any pictures that would demonstrate the extent of the damage caused by the small patched holes. Also I find the paint had surpassed its useful life of 4 years as per Residential Tenancy Branch Policy Guideline #40 and would likely have required to be done after a tenancy of 6 years. This part of the landlord's claim is dismissed.

The landlord claim for photocopying and mailing documents for this hearing is dismissed as these costs are not recoverable under the Act.

I find the landlord has provided insufficient evidence in support her claim that both the key fobs and parking passes were not returned. If the landlord had completed a move-out condition inspection report with the tenants the failure of the tenants to return these items could have been recorded in the report and witnessed by the tenants. Further, there is no evidence that the landlord attempted to contact the tenants to obtain the alleged unreturned key and pass. I find that the pictures submitted by the landlord do support the landlord's claim that one key fob and one parking pass were damaged beyond normal wear and tear. I award the landlord **\$75.00** for the damaged key fob and **\$20.00** for one parking pass.

As the landlord was for the most part not successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application from the tenants.

Total entitlement for Landlord: \$108.28 (\$13.28 + \$75.00 + \$20.00)

Although the landlord did make a claim against the security deposit within 15 days of being provided the forwarding address, the landlord's right to claim against the deposit for damages was extinguished as the landlord failed to complete a condition inspection report with the tenants at the end of the tenancy. I find the landlord submitted insufficient evidence that she was not able to complete the report with the tenants as tenant N.H. was not being cooperative during the inspection. In either event, the landlord failed to provide the tenants a second opportunity for inspection. The tenant's security deposit was not refunded within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of \$1400.00, which is double the original security deposit of \$700.00. Including the key fob and parking pass deposits of \$190.00 the tenants are entitled to a total award of **\$1590.00**.

Offsetting the monetary award of \$108.28 in favor of the landlord, the tenants are entitled to a monetary order of **\$1481.72**.

The tenants are granted a Monetary Order in the amount of **\$1481.72**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of **\$1481.72**. 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: November 07, 2018

Residential Tenancy Branch