



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords filed under the *Residential Tenancy Act* (the “Act”), for a monetary order for damages or compensation for losses under the Act, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

Both the Landlords and the Tenant attended the conference call hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant testified that they had received the Landlords’ documentary evidence.

The Tenant testified that they had provided an evidence package to the Residential Tenancy Branch (RTB) but that they had not served that evidence on the Landlords. As the Landlords were not served the Tenant’s documentary evidence, and pursuant to the RTB rules of procedure, I will not consider the Tenant’s documentary evidence in my final decision.

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

- Is the Landlord entitled to monetary compensation for damages under the Act?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on July 21, 2018, that rent in the amount of \$1,200.00 had been payable on the first day of each month, and that the Tenant had paid a security deposit of \$600.00 at the outset of this tenancy. The Landlords and Tenant testified that the move-in inspection had not been completed for this tenancy.

The parties also agreed that this tenancy ended on January 31, 2020, in accordance with the Act, and that both the Landlords and the Tenant were present at the move-out inspection, and that a \$100.00 deduction to the security deposit had been agreed to by the Tenant and that this agreement had been recorded on the move-out inspection report and signed by both parties. A copy of the move-out inspection report was submitted into documentary evidence by the Landlords.

The Landlords testified that the \$100.00 deduction had been agreed to, to cover the cost of repairing the garage door, as it had been broken at the end of this tenancy.

The Tenant testified that the \$100.00 deduction they agreed to was to cover additional cleaning not to repair to the garage door. The Tenant testified that they had been unaware that the garage door was broken at the end of tenancy.

The parties agreed that the Landlords returned \$400.00 of the \$600.00 security deposit for this tenancy to the Tenant. The Landlords testified that they kept an additional \$100.00 from the security deposit as the cleaning had taken them so long to complete.

The Tenant testified that they did not agree to the Landlords keeping an additional \$100.00 from the security deposit.

The Landlords testified that the rental unit had been returned to them uncleaned and damaged at the end of this tenancy. The Landlords testified that it took them 11.5 hours to clean the rental unit at the end of this tenancy and that they are requesting to recover \$448.50 in compensation for their time to clean the rental unit, at a rate of \$39.00 per hour.

The Landlords acknowledged that they had included a request to collect GST with their cleaning costs. The Landlords withdrew the rest for GST on their costs for cleaning during these proceedings.

The Tenant testified that the Landlords required an above standard cleaning during the move-out inspection, that they had completed sufficient cleaning and that no additional cleaning was required at the end of this tenancy. The Tenant testified that they had agreed to the Landlord's keeping \$100.00 from the security deposit for this tenancy in an attempt to appease them during the move-out inspection.

The Landlords testified that the garage door was damaged during this tenancy and that it cost them \$85.05 to have the garage door repaired. The Landlord testified that the Tenant had agreed to them keeping \$100.00 from the security deposit to cover the cost of having the garage door repaired and that those funds were not for cleaning as the Tenant had testified to in these proceedings. The Landlords submitted a copy of the invoice for this repair into documentary evidence.

The Tenant testified that they were not aware of a problem with the garage door until they had received the details of the Landlords' application for these proceedings and that as far as they knew, the garage door was working fine at the end of this tenancy. The Tenant also testified that they had not agreed to the Landlord keeping part of the security deposit for repairs to the garage door.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I find that these parties entered into a periodic tenancy agreement on July 21, 2018, and that this tenancy ended on January 31, 2020, in accordance with the *Act*.

I accept the Tenant's testimony that they had agreed to the Landlords' keeping \$100.00 of their \$600.00 security deposit for this tenancy and that they had received \$400.00 of the security deposit back from the Landlords, leaving the Landlord's hold \$200.00 of the original \$600.00 security deposit for this tenancy.

I accept the testimony of the Landlords that they did not conduct the move-in inspection for this tenancy. Section 35 of the *Act*, places the responsibility on a landlord to ensure

that the move-in inspection is conducted in accordance with the Act, stating the following:

Condition inspection: start of tenancy or new pet

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) ***The landlord must complete a condition inspection report in accordance with the regulations.***

(5) *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.*

(6) *The landlord must make the inspection and complete and sign the report without the tenant if*

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Pursuant to section 23 of the Act a landlord is required to conduct condition inspection and create an inspection report, Section 19 of the *Residential Tenancy Regulations* (the “*Regulations*”) provided further clarity on the requirements of the inspection report, stating the following:

Disclosure and form of the condition inspection report

19 *A condition inspection report must be*

(a) in writing,

(b) in type no smaller than 8 point, and

(c) written so as to be easily read and understood by a reasonable person.

Accordingly, I find that the Landlord breach section 23 of the Act, by not conducting the move-in condition inspection and creating a written report of that inspection, in

accordance with the *Act* and *Regulations*. Section 24 of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

Consequences for tenant and landlord if report requirements not met

24 (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

- (a) does not comply with section 23 (3) [2 opportunities for inspection],*
- (b) having complied with section 23 (3), does not participate on either occasion, or*
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Consequently, I find that this Landlords had extinguished their right to make a claim against the security deposit for this tenancy.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

- (a) the date the tenancy ends, and*
- (b) the date the landlord receives the tenant's forwarding address in writing,*

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

In this case, I find that this tenancy ended on January 31, 2020, the dated the Landlords took back possession of the rental unit, and that the Landlords were in receipt of the Tenant's forwarding address, as of February 28, 2020. Accordingly, the Landlords had

until March 15, 2020, to comply with section 38(1) of the *Act* by returning security deposit they are holding for this tenancy.

I accept the Tenant's testimony that they had agreed to the Landlord's keeping \$100.00 of their \$600.00 security deposit for this tenancy and that they had received \$400.00 of the security deposit back from the Landlords, leaving the Landlord's hold \$200.00 of the original \$600.00 security deposit for this tenancy; \$100.00 of this with permission and \$100.00 without permission.

I find that the Landlords had the legal right to retain \$100.00 of the \$200.00 they kept from this security deposit for this tenancy. However, I find that they did not have the right to retain the other \$100.00 that they are holding of this security deposit as they did not have permission from the Tenant to keep those funds, and they had extinguished their right to make a claim against those funds.

I have reviewed the Landlords' application, and I note that they have included a claim against this \$100.00 portion of the security deposit, even though they had extinguished their right to make such a claim. I find that the Landlords ought to have returned this \$100.00 the Tenant no later than March 15, 2020.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit within the 15 days, the landlord must pay the tenant double the original security deposit paid for the tenancy.

Return of security deposit and pet damage deposit

- 38 (6) If a landlord does not comply with subsection (1), the landlord*
- (a) may not make a claim against the security deposit or any pet damage deposit, and*
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, I find that pursuant to section 38(6) of the *Act*, the original value of the security deposit for this tenancy has doubled, and is now valued at \$1,200.00, due to the Landlord breach of section 35(2) of the *Act*.

As it has already been determined that the Landlords had returned \$400.00 of this security deposit to the Tenant, I find that the Landlords are currently holding an \$800.00 security deposit for this tenancy.

The Landlords have claimed for \$448.50 in compensation for 11.5 hours of cleaning they completed in the rental unit at the end of this tenancy. During these proceedings, the parties, in this case, offered conflicting verbal testimony regarding the cleanliness of the rental unit at the end of the tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, as this is the Landlords application, it is the Landlords that hold the burden of proof on this matter.

I accept the agreed-upon testimony of these parties that the move-out inspection had been completed in accordance with the Act, and I accept that this document is a reliable account of the condition of the rental unit at the end of this tenancy. I have reviewed this document, and I note that it clearly records that the rental unit was returned to the Landlords uncleaned. Therefore, I find that the Tenant did return the rental unit to the Landlords uncleaned. Section 37 of the *Act* requires that a tenant return a rental unit to a landlord clean, stating the following.

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the Tenant breach section 37 of the *Act* when they returned the rental unit uncleaned. Consequently, I award the Landlord the recovery if their requested compensation of \$448.50, to have the rental unit cleaned at the end of this tenancy.

The final item the Landlord claimed for is for the recovery of \$85.05 in their costs to have the garage door repaired at the end of the tenancy. Again, during these proceedings, the parties offered conflicting verbal testimony regarding the condition of the garage door at the end of this tenancy. As this is the Landlords' application, the burden of proof remains with them to provided sufficient evidence over and above their testimony to establish their claim.

I have reviewed the move-out inspection report, with an eye for this matter, and I note that there is no record on that report of a damaged garage door, nor did I find any submissions from the Landlords to show that there was damage to this door, or to prove that it was the Tenant who caused this damage. Additionally, after reviewing the repair invoice submitted into documentary evidence, I noted that the repair was completed over a month after the end of tenancy date.

Overall, I find that there is insufficient evidence to persuade me that the damage to the garage door the Landlords have claimed for in these proceedings, was caused by the Tenant or even happened during this tenancy. Therefore, I dismiss this portion of the Landlords' claim in its entirety.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in their claim, I find that the Landlord is entitled to the recovery of their \$100.00 filing fee paid for their application.

Overall, I grant the Landlord permission to retain \$548.50; consisting of \$448.50 in cleaning costs, and \$100.00 in the recovery of the filing fee for this hearing, from the security deposit they are holding for this tenancy, in full satisfaction of the amounts awarded above.

I order the Landlord to return the remaining \$251.50 of the security deposit that they are holding for this tenancy to the Tenant within 15 days of receiving this decision.

Additionally, I grant the Tenant a conditional monetary order in the amount of \$251.50, to be served on the Landlord in the event that they do not comply as ordered.

Conclusion

I grant permission to the Landlords to retain \$548.50 from the security deposit for this tenancy.

I order the Landlords to return the remaining \$251.50 of the security deposit they are holding for this tenancy to the Tenant, within 15 days of the date of this decision.

I grant the Tenant a conditional **Monetary Order** in the amount of **\$251.50** for the return of the remaining value of the security deposit. The Tenant is provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible, should they not comply as ordered. 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.

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 15, 2020

Residential Tenancy Branch