



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: *MNSD, MND, MNR, FF.*

Introduction

This hearing dealt with applications by the tenant and the landlord, pursuant to the *Residential Tenancy Act*. The tenant applied for the return of his security deposit pursuant to Section 38 and the landlord applied a monetary order for damages to the unit and for unpaid utilities, pursuant to Section 67. Both parties applied to recover the cost of filing the application for arbitration, pursuant to Section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

Is the tenant entitled to the return of his security deposit, an amount equal to his security deposit and his filing fee?

Is the landlord entitled to a monetary order for damages to the rental unit and in what amount, unpaid utilities and the fee to file this application?

Background and Evidence

The landlord testified that the tenancy started on March 01, 2008. Rent was set at \$850.00 due in advance on the first of the month. The tenant was required to pay one third of the utility bill. The tenant paid a security deposit of \$425.00 on February 14, 2008. A move in inspection was recorded and the suite was in satisfactory condition. This report submitted into evidence, by the landlord is not signed by either party.

On September 04, 2008, the landlord served a two month notice to end tenancy for landlord use. On October 03, 2008 the tenant served the landlord with a ten day notice to move out and he did so on October 13, 2008. On October 13, 2008 the landlord conducted a move out inspection with the tenant and except for one minor deficiency in

the kitchen, the landlord indicated that the suite was in satisfactory condition and agreed to send the tenant his security deposit by mail. The tenant had given the landlord his forwarding address on October 03, 2008.

On October 28, 2008, the landlord sent the tenant a cheque in the amount of \$377.89 which consisted of the security deposit with interest and deductions for utilities in the amount of \$51.05. The landlord has submitted into evidence photographs of marks on the walls. He stated that the suite needs to be repainted and has submitted a quote in the amount of \$409.09. The landlord is also making a claim for unpaid utilities in the amount of \$78.47 and has submitted invoices to support this claim. The tenant agreed that he owed for utilities as these bills were received after he had moved out of the suite.

Analysis

Section 38 (1) of the *Residential Tenancy Act* states that within 15 days after the later of the date the tenancy ends or the date that the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make an application to claim against the security deposit. Section 38 (4) (a) states that the landlord may retain an amount from the security deposit if the tenant agrees in writing that the landlord may retain the amount to pay an obligation of the tenant.

In this case, the landlord retained part of the security deposit without the tenant's consent in writing and returned the balance to the tenant in a timely manner. However, the landlord did not apply to retain this amount within 15 days after the tenant moved out. Therefore, the landlord may not make a claim against the security deposit and must pay the tenant double the base amount of the security deposit that was retained.

Accordingly, pursuant to Section 38(6) of the *Residential Tenancy Act*, I find that the tenant is entitled to the return of deposit, double the retained part of the deposit, the accrued interest on the base amount and the filing fee in the amount of \$50.00.

I find that the tenant is entitled to his security deposit of \$425.00, interest of \$4.58, double the retained part of the deposit \$50.05 and the filing fee \$50.00 for a total of

\$529.63. The landlord has already returned \$377.89 to the tenant which leaves a balance of 151.74 owed to the tenant.

The landlord has applied for a monetary order to cover the costs of painting the suite. At the time of the move out inspection, the landlord did not point out this deficiency to the tenant. She stated that she did not notice it at that time and did not complete a move out inspection report. Based on her oral evidence, I find that she is not entitled to the costs of painting the suite. Regarding the utilities, the tenancy agreement stipulated that the tenant was required to pay one third of the utilities. The tenant agreed that he owed his share of the utilities and the landlord has submitted evidence by way of utility bills, to support his claim. I find that the landlord is entitled to \$78.47 towards the utilities. Since the landlord made deductions to the security deposit without the written consent of the tenant, the tenant had to file this application for the return of his security deposit. Hence I find that the landlord is not entitled to the recovery of his filing fee as he could have resolved this matter directly with the tenant by complying with Section 38 of the *Residential Tenancy Act*.

As per the above the landlord owes the tenant \$151.74 and the tenant owes the landlord \$78.47. Therefore the landlord owes the tenant a balance of \$73.27.

Conclusion

I hereby grant the tenant an order under section 67 of the *Residential Tenancy Act*, for the total of **\$73.27**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated December 11, 2008.
