

Dispute Resolution Services

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

DECISION

Dispute Codes:

MNDC, MNSD, MND, FF

Introduction

This hearing was convened in response to an application filed by the tenant and an application filed by the landlord. Both parties were represented in the hearing and each was given an opportunity to participate in the hearing and each provided submissions and affirmed testimony to this process.

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*.

The tenant seeks a monetary order for:

- return of the security and double the amount as per compensation under Section 38 of the Residential Tenancy Act (the Act) (\$1500)
- to recover the filing fee from the landlord for this application in amount of \$50

The landlord seeks a monetary order for:

- money owed or compensation for damage or loss under the Act, regulation or tenancy agreement (loss of revenue \$750)
- keep all or part of the security deposit in partial satisfaction of the monetary claims
- unpaid utilities (gas bill of \$178)
- damage to the rental unit (damaged carpet \$915, unclean carpet \$160, broken entrance door \$375)
- to recover the filing fee from the landlord for this application in amount of \$50

Issue(s) to be Decided

Has the tenant / landlord established, on a balance of probabilities, that they have suffered a loss due to the landlord's / tenant's neglect or failure to comply with the Act? And, if so established, did the tenant / landlord take reasonable steps to mitigate the loss?

The burden of proving loss and damage rests on the respective claimant, and, there is an obligation upon the claimant to act reasonably to mitigate or minimize the loss.

Is the tenant / landlord entitled to the monetary amounts claimed?

Background and Evidence

The landlord was denied entry into evidence 1 page of evidence, and 12 photographs received at Residential Tenancy Branch which the landlord acknowledged were never forwarded to the tenant. Alternatively, the landlord gave oral testimony as to the contents of these submissions. I allowed into evidence a one page submission faxed on June 22, 2009, which the tenant acknowledged receiving.

The undisputed evidence is that the tenancy started July 01, 2007. The tenants vacated the suite February 28, 2009. Rent in the amount of \$1,500.00 was payable in advance on the first day of each month, and a security deposit of \$750.00 was collected at the outset of the tenancy. The tenancy agreement also provided the tenant would pay 1/2 share of the monthly cost of utilities of gas. The parties both agree that on March 05, 2009, the tenant personally gave the landlord a written request for the return of the security deposit, and the tenant's written forwarding address.

It is further undisputed by the landlord and tenant, that there was no move-in (start of tenancy) inspection done at the outset of the tenancy. The parties agree there was no move-out (end of tenancy) inspection done at the end of the tenancy.

The tenant's claim is for double the security deposit as per Section 38 of the Act, and accrued interest on the root amount of the security deposit.

The landlord's claims the tenant left the suite with damage, and in an unclean condition. The tenant categorically denies all the landlord's allegations of damage, and saying he had the carpets cleaned to the best of his ability – taking into account that the carpeting is older and quite light in colour. The tenant also claims that the damage to which the landlord refers was damage that existed at the time of the start of the tenancy, from the previous tenancy. Also, damage to the entrance door (cracking) was there at the outset of tenancy and the damage grew more noticeable from wear and tear.

As well, the landlord testified the tenant still owes arrears of the gas utility in the amount of \$178. The tenant disputes this amount as he has yet to receive the bill to which this amount pertains; and regardless, the amount is higher than it should be because another tenancy was added to the property whom should absorb some of the utility usage – the tenant saying it should be 20% of the total property share – or equaling 20% of the tenant's share of 50%. The landlord is also claiming 1/2 month's rent as loss off revenue, as the tenant did not return the keys until March 3, 2009. The landlord claims that he had a renter available for March 1, 2009, but his then had to be delayed until March 15, 2009.

Analysis

I have reviewed all submissions and reflected on all the testimony and claims of the parties. In my review I find there are portions of the tenant's testimony which I favour over the landlord's testimony, and there are portions of the landlord's testimony that I favour of the tenant's.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss.

Simply stated, the claimant bears the burden of establishing each claim on the balance of probabilities. 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. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

As to the landlord's claims:

In the absence of evidence of a start of tenancy inspection, or end of tenancy inspection being facilitated by the landlord, **I find** that the landlord's right to claim against the security deposit has been extinguished, as per Section 36 of the *Act*.

Again, in the absence of start and end of tenancy inspections, **I find** the landlord's claims for damages do not meet the above noted test for damage and loss claims. I dismiss this portion of the landlord's claim without leave to reapply.

When the tenancy ended, the landlord could have simply changed the lock to the rental unit in order to accommodate a waiting new tenant – rather than incurring revenue losses awaiting the return of a key from the tenant. **I find** the landlord may have incurred a revenue loss, but it was not a loss attributable to the actions or neglect of the tenant. I dismiss this portion of the landlord's claim without leave to reapply.

The tenant does not dispute he owes a quantum of a gas utility bill. The tenant disputes the amount he should be made to pay, stating that the amount he and the landlord agreed to - 50% of the property's utility bill should be subtracted by 20 % of his portion due to gas usage by another occupant in the building. In the absence of the landlord's

provision of the utility bill in question, but on the preponderance of the evidence, **I find** that solely in this portion of the landlord's claim, the landlord is entitled to **\$125**.

As the landlord is partially successful in their application, the landlord is entitled to partial recovery of the filing fee in the amount of **\$10** bringing the landlord's total entitlement to **\$135**.

As to the tenant's claim:

The tenancy ended on February 28, 2009. It is undisputed that the tenant provided the landlord with (their) written forwarding address on March 05, 2009. The landlord did not return the security deposit and did not apply for dispute resolution until March 25, 2009.

Section 38 of the Residential Tenancy Act (the Act) provides as follows:

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

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Further: 38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit. **I find** that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing.

I find that the tenant has established a claim for the security deposit of \$750, accrued interest of \$17, and double the base amount of the security deposit in the amount of \$750, for a total of **\$1517**. The tenant is also entitled to recover the \$50 filing fee for this application, bringing the tenant's total entitlement to **\$1567**.

The respective entitlements of the parties are reflected as follows:

Total of tenant's entitlements	\$1567
Total of landlord's entitlements	-\$135
Owed to tenant	\$1432.00

Conclusion

I grant the tenant a monetary order under Section 67 of the Act for **\$1432**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 26 , 2009