



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNSD, MNDC, FF.

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for cost of cleaning, repairs and for the filing fee. The tenant applied for a monetary order for the return of double his security deposit, a move out fee and the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the tenant pointed out that in his application for dispute resolution, the landlord had not checked the box that allowed him to apply for the return of the security deposit. The tenant concluded that the landlord had not applied to retain the security deposit within the stipulated time and therefore the tenant was entitled to the return of the double the security deposit.

Even though the landlord did not check off the appropriate box, I find that the landlord's evidence contained specific references to the security deposit, thereby putting the tenant on notice that the landlord was applying for damages against the security deposit. The tenant received a copy of the landlord's evidence and was aware of the landlord's intention to retain the security deposit against the cost of repairs.

Therefore, I find that in these circumstances, it is reasonable to amend the landlord's application to include a claim for the return of the security deposit.

After discussing this matter, the tenant agreed that the landlord had intended to apply to retain the security deposit and simply neglected to check off the appropriate box.

Issues to be decided

Is the landlord entitled to a monetary order to recover the cleaning costs, repair costs and the filing fee? Is the tenant entitled to the return of double the security deposit, the move out fee and the filing fee?

Background and Evidence

The tenancy began on May 01, 2009 and ended on June 30, 2010. The rent was \$3,500.00. Prior to moving in the tenant paid a security deposit of \$1,750.00.

The tenant stated that he moved all his belongings out of the rental unit, by June 28, 2010. On that day a move out inspection was conducted by the property manager and a report was filled out. The parties agreed that the tenant would return the next day to finish cleaning the rental unit.

The landlord stated that later that day (June 28), he sent a note to the tenant regarding damage to the unit that was not recorded on the inspection report. The tenant returned to the unit on June 29. He stated that a tradesperson in the unit denied him access and therefore he left the unit without completing the cleaning that he intended to do. The tenant stated that he did not contact the landlord until he received a copy of the inspection report on July 02, 2010.

The tenant gave the landlord his forwarding address on July 10, 2010. In the first week of July, the parties corresponded by email and attempted to resolve their claims against each other, without success. On July 13, 2010 the landlord filed a claim for damages. Both parties filed copies of all email correspondence between them and the landlord also filed photographs and invoices to support his monetary claim.

The landlord is claiming the following:

1.	Cleaning of blinds	\$476.25
2.	Repair of ceiling, fireplace and windows	\$313.60
3.	Repair of marble counter tops	\$45.00
4.	Repair of refrigerator	\$206.54
5.	Cleaning	\$150.00
6.	General repairs	\$300.00
7.	Filing fee	\$50.00
	Total	\$1,541.39

The tenant is claiming the following:

1.	Double the security deposit	\$3,500.00
2.	Move out fee	\$100.00
3.	Filing fee	\$50.00
	Total	\$3,650.00

Analysis

Landlord's application:

The tenant did not dispute the charge of \$476.25 to clean the blinds. The tenant also agreed that he had taped the ceiling in the second bedroom, put sticky tape on the fire place and installed locks on the windows. The landlord provided photographs and invoices to support his claim of \$313.60 to fix these items. Based on the documentary evidence and testimony of both parties, I find that the landlord is entitled to his claim for the cost of cleaning the blinds and repairing the ceiling, fireplace and windows.

The tenant denied the damage to the marble counter tops in the bathroom. The landlord stated that he had provided the tenant with a special cleaning solution, but the tenant had used an abrasive cleaner which resulted in scratches to the counter top.

The landlord mitigated his losses by fixing the damage as best he could instead of hiring a company to do it. Therefore I find the landlord is entitled to his claim of \$45.00.

The tenant agreed that the strips along the sides of the refrigerator had come off at the start of the tenancy, but he did not inform the landlord as the operation of the refrigerator was not affected by the loss of the strips. The landlord also filed a photograph to show damage to the liner of the refrigerator which had been patched up with a putty like substance and an invoice to support his claim of \$206.54. I find that the landlord is entitled to this amount.

The tenant agreed that he did not finish the cleaning that he intended doing, due to lack of access to the rental unit. However, the access was not denied by the landlord and both parties had agreed at the time of the move out inspection, that the tenant would return to finish the cleaning. Therefore, I find that the landlord is entitled to the cost of cleaning in the amount of \$150.00.

The landlord filed photographs to show dents in the kitchen cabinet doors and provided a list of all the minor repair work that he had to carry out. The landlord is claiming \$300.00 for this and I find that the landlord has proven his claim for this amount.

Since the landlord has proven his claim, he is also entitled to the recovery of the filing fee of \$50.00.

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of both parties, I find that the landlord made an application for dispute resolution within 15 days of the end of tenancy and is therefore not liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit. Accordingly, the tenant's application for the return of double the security deposit is dismissed.

I find that the tenant is entitled to the move out fee in the amount of \$100.00. Since the tenant has proven a claim of \$100.00 out of his total claim of \$3,650.00, the tenant must bear the cost of filing his own application.

Overall the landlord has established a claim of **\$1,541.35** and the tenant has established a claim of **\$100.00**. The landlord currently holds the security deposit of \$1,750.00. I order that the landlord retain a portion of the security deposit in full satisfaction of the claim. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for the balance due of \$308.65. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$308.65**.

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: December 01, 2010.

Dispute Resolution Officer