



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, to keep all of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail. The Tenant confirmed receipt of the hearing package.

The Landlord and Tenant appeared, acknowledged receipt of some of the evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. A determination pertaining to evidence received by each party will be listed under the analysis section of this decision.

Issues(s) to be Decided

1. Has the Landlord met the burden of proof that the rental unit suffered damaged during the tenancy due to the Tenant's neglect or breach of the *Act*?
2. Has the Landlord proven entitlement to monetary compensation as a result?

Background and Evidence

The tenancy agreement was effective August 1, 2009 and ended on June 17, 2010 when the Tenant vacated the rental unit. Rent was payable on the first of each month and the Tenant paid a security deposit of \$375.00 on July 27, 2009.

The Landlord testified he sent two registered mail packages to the Tenant; the first contained the hearing documents and copies of the Landlord's initial evidence documents and two photographs. The second package was sent November 24, 2010, for which the Landlord provided testimony with the tracking number, and which contained copies of the quotations for carpet cleaning rental, repairs to the wall, and a copy of the unsigned move out inspection report. There was a third package of evidence received at the *Residential Tenancy Branch* from the Landlord which included the originals of each document that was sent in the second package. The Landlord confirmed receipt of the evidence submitted by the Tenant.

The Tenant testified he did not receive the second registered mail package from the Landlord.

The Landlord confirmed he met with the Tenant at the rental unit on June 17, 2010 and they conducted a walk through inspection. He states the Tenant refused to sign the move-out inspection form at which point the conversation broke down and the Landlord told the Tenant he had the rental unit until June 30, 2010 and he could keep the key. The Landlord is seeking to keep the security deposit of \$375.00 as compensation for the damage that needs to be repaired. He has made no effort to re-rent the unit since June 17, 2010, he simply had the locks changed and closed the suite. None of the repairs have been completed as he was waiting for the result of this hearing. The damages involve repair to the drywall in the bedroom which is estimated at \$418.00, cleaning the carpets at a rental cost for the machine at \$23.52, repairs to the gas fireplace in excess of \$400.00, and cost to change the locks at \$49.16. The Landlord stated that he could not prove the fireplace damage was a result of the Tenant's usage, however it does not change the fact that he has to pay to repair it.

The Tenant pointed out that the Landlord testified that he was not holding him accountable for damage to the fireplace. He stated that his usage of the fireplace was nothing more than turning the light switch on when it was cold in the unit and turning it

off when it was hot. The fireplace was the only source of heat in the living room and kitchen area that he could remember and there may have been one baseboard electric heater to heat the rest of the suite. He referred to his evidence which included his typed statement pertaining to circumstances surrounding his returning the key to the rental unit. He argued that it was the Landlord who refused to sign the move out inspection form and that he attempted to give the key to the Landlord on June 17, 2010 and the Landlord refused to take it and told him he was responsible for the unit until June 30, 2010. So immediately after the inspection he taped the key to the Landlord's door handle then rang the bell. As soon as the Landlord's door was opened he took a photo of the door open to prove they were home when he left the key which is visible in the photo. He referred to his witness statement which was provided in his evidence and supports his testimony of what transpired on June 17, 2010. The Tenant read a letter he wrote to the Landlord which was dated May 30, 2010 in which he provided the Landlord his forwarding address.

The Landlord confirmed he received the Tenant's forwarding address in writing on May 30, 2010. He also confirmed he told the Tenant to keep the rental unit key until June 30, 2010 and initially stated that he could not identify his door in the photo. He later stated that when his door was opened the Tenant began to take photos and the Landlord thought he was taking pictures of his son so he threatened to call the police. He went after the Tenant however the tenant went into his car and drove away. The Landlord questioned the Tenant's carpet cleaning receipt provided in evidence as it had been altered by scratching out someone else's name and adding the Tenants.

Analysis

After consideration of the evidence provided by both parties I find the Landlord served the Tenant with all copies of his evidence in accordance with the Act. The second registered mailed package was sent by the Landlord on November 24, 2010, and the Tenant is deemed to have received this evidence on November 29, 2010, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I find the Tenant was sufficiently service with all copies of the Landlord's evidence. I have carefully

considered the evidence and testimony provided by both parties in my following decision.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the rental unit was not fully cleaned and there was indication that the carpets were not cleaned at the onset of the tenancy. Therefore it is the Landlord who initially caused a breach of section 32 of the Act which states the Landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. The *Residential Tenancy Policy Guideline # 1* states that at the beginning of the tenancy the landlord is expected to provide the tenant with a clean rental unit with clean carpets in a reasonable state of repair. As of today's date the Landlord has not suffered a loss as he has not had the carpets cleaned. In consideration of the aforementioned and in the presence of opposing testimony as to the condition of the rental unit at the end of the tenancy, I find the Landlord has provided insufficient evidence to prove the test for

damage or loss as listed above. Therefore I hereby dismiss the Landlords claim for carpet cleaning.

The Landlord has sought compensation to repair the fireplace, which he stated he cannot prove was damaged due to the Tenant's misuse, and for which he has not suffered a loss as he has not repaired the unit. The photo provided by the Landlord which displays black soot on the exterior of the house does not prove the Tenant caused damage to the rental unit or the fireplace or that the required repairs were required due to anything more than a lack of maintenance or age of the fireplace. Therefore I find the Landlord has provided insufficient evidence to support his claim for fireplace repairs and the claim is hereby dismissed.

The Landlord has sought \$418.00 to repair one scratched area on the bedroom wall. Based on the information provided on the move-in inspection report the unit had not been repaired or painted prior to the tenancy. I note that the photo evidence provided by the Landlord displays some minor damage to the wall which was not noted on the move inspection report and I find this damage while minor, is more than normal wear and tear. Section 32 of the Act provides that a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. Based on the above I award the Landlord a nominal amount to repair the one bedroom wall where the damage occurred in the amount of \$85.00.

There is opposing testimony as to what transpired on June 17, 2010 when the Tenant attempted to return the key. After careful consideration of the evidence I find that on a balance of probabilities the Tenant did attempt to return the key and the Landlord refused to accept it. I also find that the Landlord's property was not at risk when the Tenant taped the key to the Landlord's door handle as the evidence supports the

Landlord was home and was alerted about the key when the Tenant rang the doorbell causing the Landlord's door to be opened. The Landlord chased after the Tenant who was taking photos. Section 25 of the Act provides that a Landlord must pay for the costs associated with rekeying the locks. Based on the aforementioned I find the Landlord has failed to prove the test for damage or loss as listed above and I hereby dismiss his claim of \$49.16.

The Landlord has been partially successful with his claim, therefore I award recovery of the \$50.00 filing fee.

The evidence supports that the Tenant provided the Landlord with his forwarding address in writing on May 30, 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than July 2, 2010. The Landlord did not file his application until July 15, 2010.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Monetary Order – I find that the landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Repairs to bedroom wall	\$85.00
Subtotal (Monetary Order in favor of the landlord)	\$135.00
Double the security deposit owed to the Tenant (2 x \$375.00)	-750.00
Interest owed on \$375.00 security deposit of \$0.00	- 0.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$615.00

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$615.00**. The order must be served on the Landlord and is enforceable through the Provincial Court 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: December 03, 2010.

Dispute Resolution Officer