



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF
 MND, MNSD, FF

Introduction

This hearing dealt cross application by the tenant and landlord. The application by the tenant is for return of the security deposit and recovery of the filing fee. The application by the landlord is for a monetary order for damage to the unit, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing and gave affirmed testimony.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Preliminary Matters

At the outset of the hearing the landlord per the Residential Tenancy Branch Rules of Procedure **Rule 10 INTRODUCTIONS AND PRELIMINARY MATTERS** requested to bring preliminary issues forward. The landlord requested that the tenant be compelled to state who and how the evidence package was delivered to the landlord's apartment door as unauthorized entry into the building would have constituted trespassing and therefore illegal. The landlord stated that as the delivery of this evidence was illegal it was therefore not properly served to the landlord.

The landlord also stated that he had in fact filed for dispute resolution in a timely manner as section 60 (3) of the Act states: *the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.* The landlord referred to **Landlord and Tenant Fact Sheet RTB-109** maintaining that he had in fact filed in time and return of double the security deposit was not applicable.

Background and Evidence

This tenancy began August 15, 2009 with monthly rent of \$1350.00 and the tenant paid a security deposit of \$675.00. The parties signed a Mutual Agreement to End Tenancy effective April 15, 2011.

The tenant testified that on April 29, 2011 they had received a cheque from the landlord for \$300.00 which was the tenant's security deposit minus \$375.00 for damages and cleaning costs. The tenant stated that he never agreed to the landlord making any deductions from the security deposit and does not agree with the landlord's claim for damages or that the rental unit was not thoroughly cleaned upon vacating. The tenant stated that as the landlord did not return the security deposit in full or file to claim against the security deposit within the 15 day time period as outlined in section 38 (1) of the Act, the tenant is now entitled to return of double the security deposit.

The tenant in this application is seeking \$1350.00 compensation in return of double the security deposit.

The landlord testified that the tenant did not thoroughly clean the rental unit, had damaged the stove fan hood and door knob, did not pay the \$50.00 strata move-out fee and did not return a chair and clock that had been provided to the tenant as part of the tenancy. The landlord stated that on April 15, 2011 a move-out condition inspection was completed with the tenant however the tenant refused to sign the report as he did not agree with the landlord's notations regarding damage and cleaning.

The tenant was adamant that he was never provided with a copy of the move-out condition inspection report by the landlord and then stated that as he was never provided his own original copy he could now not prove that the landlord had added notations about damages and items not cleaned at a later date. The landlord stated that the tenant was provided a copy of the move-out condition inspection report on April 16, 2011 when the tenant returned to the unit to complete a more thorough cleaning of the rental unit.

The tenant testified that he initially thought the landlord was trying to take advantage of him when he was told there was a \$50.00 strata move-out fee but that he now understands that this is a standard fee charged by the strata. The landlord responded by stating that the \$50.00 move-in and move-out fees is clearly noted on the tenancy agreement addendum which was signed by both the landlord and tenant at the start of the tenancy. The tenant stated that he did not have an issue with paying this fee.

The tenant stated that he left the unit spotless and believed the photos submitted into evidence by the landlord were false and had not been taken at the end of his tenancy and may have been from the end of the prior tenancy. The landlord was adamant that the photos were from the end of this tenancy and that in no way was he trying to 'frame' the tenant.

The landlord referred to the photo of the oven submitted by the tenant and stated that even though the tenant took a high angle shot in an attempt to only show the cleaned areas, dirty areas in the oven could still be seen. The landlord referred to the photos that he had submitted into evidence which clearly reflect the very dirty condition of the oven at the end of the tenancy.

The landlord stated that the tenant had complained that the fan in the stove hood although working, was inadequate and requested that it be replaced. As the tenant sells and installs stove fan hoods he offered to get the landlord a better stove fan hood and install it for him. The landlord stated that he checked the new stove fan hood after it was installed and found it to be in perfect condition. The landlord stated that at the end of the tenancy damage was noted on the front corner of the stove fan hood and that the tenant commented that this type of damage *'should be expected on a 1 year old stove fan hood'*.

The tenant responded by stating that this was a \$310.00 stove fan hood that he got for the landlord at the discounted price of \$168.00 as it had cosmetic damage. The landlord was adamant that this was not the case, that the tenant's testimony was *'an outright lie'* and that he would have never purchased a damaged stove fan hood to install in place of a perfectly working stove fan hood. The landlord also refers to the receipt for the stove fan hood which does not note any damage to the unit on the receipt.

The landlord stated at the end of the tenancy during the move-out inspection he discovered that the doorknob on the master bedroom door leading to the patio was broken. The tenant stated that the doorknob had always been broken but that he did not want to hassle the landlord about getting it replaced. The landlord stated that the tenant was *'outright lying'* and that when he had asked the tenant about the doorknob the tenant commented *'how was I supposed to remember a small thing like that'*.

During the tenancy the landlord had provided the tenant with a variety of furnishings and at the end of the tenancy it was determined that the tenant had damaged a rolling office chair and clock and instead of advising the landlord about the damage simply replaced the items. The tenant again commented that he had not wanted to *'hassle'* the landlord about these items so never told him about the damage and just threw them out. The landlord stated that while the tenant attempted to replace the damaged items, a stationary chair was purchased to replace the rolling office chair and a different style of clock purchased to replace the damaged clock. The landlord stated that should he be awarded compensation for these items he will return the items purchased by the tenant to the tenant.

The landlord in this application is seeking \$538.00 compensation for the following:

- \$50.00 Strata move-out fee
- \$175.00 Cleaning of cupboards, oven etc.
- \$168.00 Damaged range hood
- \$75.00 Replacement of broken door knob

- \$50.00 Replacement of office chair
- \$20.00 Replacement of clock

The tenant concluded the hearing by stating that all through the tenancy he had been victimized by the landlord and that the landlord was not being truthful in his testimony.

The landlord in turn stated that he was truthful in his testimony, the tenant was not being forthcoming in his testimony and evidence and the landlord had always made efforts to treat the tenant fairly.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

While the landlord cites Residential Tenancy Act Section 60 *Latest time application for dispute resolution can be made* and Landlord and Tenant Fact Sheet RTB-109, I find that the landlord has not complied with section 38(1) of the Act which clearly states:

(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.

(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.

Section 60 (3) speaks to: *If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.*

As these disputes are both in relation to the security deposit I find that the time limitation outlined in section 38 (1) of the Act applies and that the landlord, having filed their application May 27, 2011 applied for dispute resolution well outside the 15 day time limitation.

The landlord has returned \$300.00 of the security deposit to the tenant and this amount will be deducted from the original security deposit amount of \$675.00.

Accordingly I find that the tenant is entitled to a monetary order for \$1050.00.

In regards to who and how the evidence was served on the landlord at his personal residence, the matter of trespass is not an issue that comes under the authority of the Residential Tenancy Act and the landlord will need to seek relief elsewhere for this matter.

Residential Tenancy Policy Guideline **12 Service Provisions** speaks to:

- *by attaching a copy of the document to a **door or other conspicuous place at the address where the person to be served resides at the time of service.** If this method is used, the person attaching the document should make sure that the door or conspicuous place belongs to the person's residence, and that the document will be readily seen by the person entering or leaving the residence.*

As the tenant left the evidence at the landlord's residence at a **conspicuous place**, I find that the tenant's evidence was properly served to the landlord.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for damages and cleaning costs.

The landlord completed the move-out condition inspection report which the tenant stated he refused to sign because he did not agree with the landlord's notations of damage or lack of cleaning and this in essence verifies that there was damage and a lack of cleaning that the landlord noted during the inspection. This in addition to the tenant's comments on how he did not advise the landlord of damage to the chair or clock and simply threw them out because he did not want to '*hassle*' the landlord, goes to the tenant showing limited responsibility towards the landlord's property.

Accordingly I find that the landlord is entitled to a monetary order for \$538.00.

As the landlord has already withheld \$375.00 of the tenant's security deposit the landlord's monetary award will be set-off by this amount resulting in a balance to the landlord of \$163.00.

As both parties have been successful in their applications neither is entitled to recovery of the filing fee as these amounts set-off each other.

The tenant is entitled to a monetary amount of \$1050.00, the landlord is entitled to a monetary amount of \$163.00. These amounts set-off each other resulting in a balance to the tenant of \$887.00.

Conclusion

I find that the landlord is entitled to a monetary award of **\$163.00** for damages and cleaning costs.

I find that the tenant has established a monetary claim for **\$1050.00** in return of the security deposit.

These amounts set-off each other and I grant the tenant a monetary order under section 67 of the *Act* for **\$887.00**.

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: August 18, 2011.

Residential Tenancy Branch