



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MND, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord **and** an application by the tenant.

The tenant filed on August 25, 2011 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for the return of the security deposit and compensation for double the deposit under the Act - Section 38
2. An Order to recover the filing fee for this application - Section 72

The landlord filed on October 03, 2011 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67
2. A Monetary Order for damages to the unit – Section 67
3. An Order to retain the security - Section 38
4. A Monetary Order for damage or loss – Section 67
5. An Order to recover the filing fee for this application - Section 72

Both parties appeared in the conference call hearing and participated with their submissions and testimony in respect to their claims and made prior submissions to the hearing and fully participated in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties were afforded an opportunity to discuss and settle their disputes, but were not able to agree. At the outset of the hearing the parties acknowledged receiving each other's evidence and being apprised of the particulars of their own claims and the claims of the other party. The landlord withdrew their application for unpaid rent, as this claim is not applicable.

During the hearing the landlord withdrew their claim for damage and loss in respect to “flea spraying”.

During the hearing the parties came to agreement that the tenant owes the landlord \$79.97 for water utility.

The hearing proceeded on the merits of the balance of the applications.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed ?

Is the landlord entitled to the monetary amounts claimed ?

Background and Evidence

The evidence of the landlord and the tenant is that this tenancy began December 01, 2010, and ended July 31, 2011. The rent payable was \$1250 per month, and the parties agree that the water utility was payable in addition to the rent. At the outset of the tenancy the landlord collected a security deposit in the amount of \$625, which the landlord still retains.

At the beginning and the end of the tenancy the parties conducted condition inspections and completed their own reports and signed the two (2) reports. Each party submitted their copy and version of the completed and signed reports. It must be noted that neither report contradicts the other. Both reports reflect that the tenant provided their forwarding address on both reports: neither of which are dated, although there is agreement the move out inspection reports were completed on July 31, 2011. Both reports also acknowledge that the tenant agrees with their own report and that the report fairly represents the condition of the rental unit at the end of the tenancy. The tenant’s own report further indicates the tenant’s statement that at the end of the tenancy they were responsible for certain damage to the rental unit : *“estimates for repair of master bedroom and violet bedroom and LR and peach (wall) nail holes and LR (living room)” – parenthesis mine.*

The landlord claims damage to certain walls of the rental unit corresponding to photographs submitted depicting holes to certain walls of the unit. The landlord provided a written estimate for remediation of the purported damage in the amount of \$260. The tenant claims the purported damage is reasonable wear and tear for the eight (8) month tenancy. The landlord further claims for cleaning costs amounting to \$100 – representing 5 hours of cleaning at \$20 per hour. The landlord provided photographic evidence of a dusty wall surface as well as several floor surfaces with

loose residue. Neither inspection report (2) of the parties addressed the areas purported to be unclean. The tenant acknowledges that the walls were not cleaned and that the landlord's evidence accurately reflects the 'dusty wall' has dust.

The landlord claims that the exterior yard of the rental unit required remediation due to pet damage to the yard surroundings – primarily some of the grass areas. The landlord provided some photographic evidence pertaining to issues with some of the grass areas, claiming they required professional repairs. The tenant claims that they made repairs themselves, including re-sodding, but that the landlord did not allow sufficient time for the grass repairs to take hold. Neither inspection report addresses any issues pertaining to the exterior of the property. The landlord provided an estimate for re-topping and re-sodding the grass areas.

Analysis

Landlord's claim

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In this case, I find the landlord lacked sufficient evidence to establish a claim for damage to the yard. I find the tenant addressed the areas of the landlord's claim and that the purported damage to the yard did not require mention on the inspection report(s). **I dismiss** this portion of the landlord's claim, without leave to reapply.

I find the landlord has advanced sufficient evidence to establish their claim for damage to walls of the unit. I note that the tenant's own evidence is that they hold themselves responsible for the damage. I grant the landlord **\$260** for damages.

I find the evidence is that the tenant left some of the areas of the rental unit unclean. I grant the landlord **\$100** for cleaning.

I grant the landlord the agreed amount for water utility, of **\$79.97**. As the landlord has been partially successful in their claim, I grant them partial recovery of their filling fee in the amount of **\$25**, for a total award of **\$464.97 to the landlord**.

Tenant's claim

The tenant claims the amount of the security deposit, any applicable accrued interest, double the security deposit, and recovery of the filing fee for the cost of the application. I find the tenant paid a security deposit of \$625. The landlord has not returned the security deposit.

Section 38 of the Residential Tenancy Act provides as follows:

Section 38(1)

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 tenancy ended on July 31, 2011, and that the tenant provided (their) forwarding address in writing on that date. I further find that the landlord failed to repay the security deposit or make an application for dispute resolution against the deposit

within 15 days of receiving the tenant's forwarding address in writing. As a result, I find that the tenant has established a claim for the security deposit of \$625, and double the base amount of the security deposit in the amount of \$625, for a sum of **\$1250**. There is no applicable interest. The tenant is also entitled to recover the **\$50** filing fee for this application, for a total award of **\$1300 for the tenant**.

Calculation for Monetary Order

Tenant's award	\$1300.00
Landlord's award	-\$464.97
Total Monetary award / Order for tenant	\$835.03

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$853.03**. If necessary, this order may be filed in the Small Claims Court and enforced 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: October 24, 2011

Residential Tenancy Branch