



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damages to the unit site or property, the filing fee, and an order to retain all or part of the security deposit and pet damage deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Finding(s)

During the hearing, the Landlord request permission to bring a witness “T” to the phone. The Landlord stated that their witness “T” could state the condition of the rental unit one month prior to the Tenant moving out.

The Tenant objected to the Landlord’s witness “T” stating that she was not informed prior to the hearing that the Landlord was planning to bring this witness as this person was not identified in any of the Landlord’s written submissions. The Tenant also stated that the Landlord’s witness “T” was not present when she moved in or moved out of the rental unit and could not testify to the condition at those times.

I considered the position of each party and the Rules of Procedure and found that the Landlord’s explanation of what their witness “T” could testify to would not be crucial to help decide the case. I also found that the Landlord failed to notify our office or the Tenant of this witness or his testimony prior to the hearing. As a result, I denied the Landlord’s request for the witness “T” to testify and his testimony was not heard.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damages to the unit site or property, the filing fee, and an order to retain all or part of the security deposit and pet damage deposit?

Background and Evidence

The parties agree that the Tenant paid a security deposit of \$500.00 and a pet damage deposit of \$50.00 on September 01, 2010. The parties agree that they have a written tenancy agreement and that the tenancy commenced on September 01, 2010 with a monthly rent of \$1,000.00 due on the first of the month. The Landlord provided a copy of the tenancy agreement in evidence. The parties agree that the rental unit was partially furnished with four bar chairs, curtains, and a rotisserie provided by the Landlord. The parties agree the Tenant provided the Landlord with their forwarding address in writing during the last week of November 2011, and requested return of their security deposit and pet damage deposit. The parties agree that the Tenant did not sign over her security deposit or pet damage deposit to the Landlord. The Landlord did not return the deposits to the Tenant and applied for dispute resolution on December 01, 2011.

The parties agree that the Tenant provided the Landlord notice to end the tenancy on October 30, 2011 to move out within 30 days. The parties agree that the Tenants paid the November 2011 rent in full and the Landlord obtained a new tenant for December 01, 2011.

Deposits and condition inspection(s)

The parties confirmed that they did not do incoming or outgoing inspection reports and that nothing was documented or signed between the parties about the condition of the rental unit before or at the end of the tenancy.

The Landlord stated that she did a walk through of the rental unit on November 30, 2011 when the Tenant was moving out and then again on December 01, 2011 when the rental unit was empty. The Landlord did not document anything with the Tenant with regards to either walk through. The Landlord stated that the new Tenant moved in for December 01, 2011. The Landlord stated that the rental unit was not sufficiently clean, there were holes in the wall of the bedroom which had to be repaired and painted, there were cracked tiles in the bathroom that had to be repaired, and the Landlord's bar chairs in the rental unit were stained and damaged and should be replaced. The Landlord stated that they gave the new tenant a \$100.00 reduction in the rent for December 2011 as the new tenant agreed to finish the cleaning that the Tenant had not sufficiently done. The Landlord's position is that she is entitled to keep the security deposit and pet damage deposit as a result of these damages and losses.

The Tenant stated that rental unit was not clean when she moved in at the start of her tenancy and that in exchange for moving in half a day early she agreed to clean the rental unit. The Tenant stated that nothing was documented between her and the Landlord about the condition of the rental unit when the tenancy started. The Tenant stated that at the end of the tenancy both her and the Landlord took pictures during a walk through of the rental unit, however nothing was documented between them about the condition upon move out. The Tenant feels that she should get double her security

deposit and pet damage deposit back as the Landlord withheld it without her consent and did not return it to her within 15 days of receiving her forwarding address in November 2011. The Tenant stated that the Landlord incurred no losses or damages and the rental unit was clean and in good condition when she moved out. Although she has not made an application, the Tenant requested that the Landlord be required to return the security deposit and pet damage deposit to her.

Cleaning costs claimed

The Landlord stated that they provided a clean rental unit to the Tenant when she moved in and that they expected the same when she moved out. The Landlord testified that they gave the new tenant a \$100.00 reduction in the rent for December 2011 as the new tenant agreed to finish the cleaning that the Tenant had not sufficiently done. The Landlord stated that the cupboards, drawers, floors, toilet, tub, windows, and curtains were not clean. The Landlord is claiming \$100.00 in relation to cleaning of the rental unit.

The Tenant stated that rental unit was not clean when she moved in at the start of her tenancy and that in exchange for moving in half a day early she agreed to clean the rental unit. The Tenant stated that she cleans private homes for extra income and that she uses bleach and cleans out every corner. The Tenant testified that she fully cleaned the rental unit and curtains when she moved out. The Tenant provided copies of photographs she took of the rental unit cleaned by her at move out. The Tenant stated the Landlord is not entitled to any cleaning costs.

Repair and painting of holes in bedroom wall claimed

The Landlord stated there were holes in the wall of the bedroom which had to be repaired and painted. The Landlord testified that they paid a handyman \$100.00 cash to fill and paint the walls of the bedroom which had some holes in them. The Landlord provided photographs of the bedroom wall prior to the repairs and painting being done. The Landlord is requesting \$100.00 for painting and repair costs for the bedroom wall.

The Tenant stated that there were only two small holes in the wall where she put in two screws to mount a mirror, and that she tried to fill the holes at move out using plaster. The Tenant testified that the walls in the bedroom at move in were painted red by the Landlord and that at move out the Landlord did not provide her any red paint so that she could do the touch up painting needed after she patched the two small holes. The Tenant disputes that it cost the Landlord \$100.00 to get this done, as the Landlord had kept red paint in the Landlord's locked storage room and the Landlord has provided no receipt for this cost.

Broken Tile claim

The Landlord stated there were cracked tiles in the bathroom that had to be repaired. The Landlord testified that they paid a handyman \$60.00 cash to repair the tiles. The Landlord stated that they were not aware of the tiles being broken until the end of the tenancy. The Landlord is seeking \$60.00 for the repair costs.

The Tenant stated that the tiles cracked during her tenancy in June 2011 due to the uneven surface in the bathroom. The Tenant stated when she informed the Landlord about this in June 2011 they sent a handyman "D" to caulk the tiles rather than replace them at that time. The Tenant stated that she should not be required to pay for the tiles.

Bar chairs claim

The Landlord stated that the bar chairs in the rental unit were stained and damaged by the Tenant and should be replaced. The Landlord's application with their written submission initially indicated that they valued the bar chairs at \$125.00 each. The Landlord provided in evidence a copy of an ad from a popular furniture retailer for similar replacement bar chairs that could be purchased new at \$99.97 each plus HST and a written submission from the Landlord that the chairs could be depreciated to \$85.00 each in value. The Landlord testified at the hearing that the bar chairs were originally bought new at a furniture store in their community for \$199.00 each. The Landlord stated that the bar chairs were only 6 months old and in excellent condition when the tenancy started and that she does not feel they should be depreciated. The Landlord stated that the Tenant offered to fix the bar chairs and reupholster them at the end of the tenancy. The Landlord stated that the Tenant did not reupholster the bar chairs and that the Tenant's attempt to repair a broken bar chair was not successful. The Landlord stated that the bar chair seats are so stained and one bar chair is broken so it not worth it to reupholster them and that it would be cheaper to buy new ones. The Landlord provided photographs of the stained bar chair seats and the broken bar chair. The Landlord provided a copy in evidence of an email they sent to the Tenant advising her that it would cost \$70.00 per bar chair to have them reupholstered, for a total of \$330.00 and the Tenant's response by email that she disagrees with the cost and that she could get them reupholstered herself if they returned her deposits. The Landlord is seeking \$796.00 (\$199 x 4) to purchase four new bar chairs.

The Tenant stated that the chairs were not brand new when she moved in that they appeared to have been used as they were somewhat dirty when she moved in. The Tenant stated that some of the photographs provided into evidence show the same stains at move out as they did at move in. The Tenant stated that she used the bar chairs during the tenancy and one of them cracked on the back and a rung fell out. The Tenant stated that she glued the cracked chair back and screwed in the rung and the chair was usable again. The Tenant testified that she agreed to reupholster the chairs only if the Landlord had given her deposits back. The Tenant stated that the Landlord's claim for the value of four new chairs should not be accepted.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Deposits and condition inspection(s)

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit or pet damage deposit.

The Landlord did apply for dispute resolution, within fifteen days of the end of the tenancy and receipt of the forwarding address of the Tenant, to retain the security deposit and pet damage deposit. However, when a Landlord fails to properly complete a condition inspection report, the Landlord's claim against the security deposit and pet damage deposit for damage to the property is extinguished. Because the Landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, as required by section 23 and 35 of the Act, they lost their right to claim the security deposit and pet damage deposit for damage to the property.

The Landlord was therefore required to return the security deposit and pet damage deposit to the Tenant within 15 days of the later of either the tenancy ending or having received the Tenant's forwarding address in writing. The parties agree that the Landlord received the Tenant's forwarding address in the last week of November and the tenancy ended on November 30, 2011, however, the Landlord did not return the security deposit and pet damage deposit within 15 days of the end of the tenancy.

Because the Landlord's right to claim against the security deposit and pet damage deposit for damage to the property was extinguished, and she failed to return the Tenant's security deposit and pet damage deposit within 15 days of having received the Tenant's forwarding address, section 38 of the Act requires that the Landlord pay the Tenant double the amount of the deposits for a total of \$1,100.00 (\$500.00 security deposit + \$50.00 pet deposit x 2).

As a result of the Landlord's failure to return the security deposit and pet deposit, I find that the Landlord owes the Tenant \$1,100.00 which represents double the amount of the deposits.

With regards to the Landlord's claim for damages to the unit site or property, section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant (in this case the Landlord) has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Tenant) pay for the loss the Applicant (the Landlord) must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent (Tenant) in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant (the Landlord) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Cleaning costs claimed

The parties do not agree on the cleanliness of the rental unit at the time of move out. The Landlord failed to carry out move-in or move-out inspections or complete condition inspection reports as required by the Act. The Landlord has provided insufficient evidence to support that the rental unit was not sufficiently clean and that they incurred \$100.00 in cleaning costs by giving a new tenant a rent reduction. As a result, I dismiss the Landlord's claim for cleaning costs.

Repair and painting of holes in bedroom wall claimed

The Tenant agrees that there were two small holes in the bedroom wall which she stated she patched, but not painted as she did not have access to the Landlord's red paint to repaint the wall. The Landlord provided insufficient evidence to support that they incurred any costs to repair or paint the wall or paid \$100.00 to have the wall patched and painted by a handyman. As a result, I dismiss the Landlord's claim for repair and painting costs for the bedroom wall.

Broken Tile claim

The parties do not agree on who is responsible for the broken tiles in the rental unit. The Landlord provided insufficient evidence to support that the Tenant damaged the tiles and that they paid \$60.00 to have the tiles repaired by a handyman. As a result, I dismiss the Landlord's claim for broken tile repair.

Bar chairs claim

The parties do not agree on the condition or value of the bar chairs when the tenancy commenced. The Landlord failed to carry out move-in or move-out inspections or complete condition inspection reports as required by the Act. The Landlord provided no evidence that they have purchased any replacement chairs or repaired or reupholstered the existing bar chairs. The Landlord has provided insufficient evidence that they have incurred any costs; rather the Landlord has only provided various estimated costs that they could incur if they choose to replace or repair the chairs in the future. As the Landlord has failed to document the condition of the chairs at move in through a condition inspection report with the Tenant and as the Landlord has not established that they have incurred any costs to repair or replace the bar chairs, I dismiss the Landlord's claim for the bar chairs.

As the Landlord has not succeeded in their Application, I dismiss the Landlord's request for the filing fee.

The Act and Residential Tenancy Policy Guideline allow a monetary order to be issued for a tenant on a landlord's application for dispute resolution where it is found that all or part of the security deposit or pet damage deposit is owed to the tenant.

As a result, I order that the Landlord pay \$1,100.00, double the amount of the security deposit and pet deposit, to the Tenant. I find that the Tenant is entitled to a monetary order for \$1,100.00 pursuant to section 67 of the Act.

Conclusion

The Landlord's Application is dismissed.

I find that the Tenant is entitled to a monetary order in the amount of **\$1,100.00**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims).

The order accompanies the Tenant's copy of this decision.

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: March 06, 2012.

Residential Tenancy Branch