



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

- 1) Return all or part of the security deposit.

The landlord's application is seeking orders as follows:

- 1) For a monetary order for damage to the unit; and
- 2) To keep all or part of the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit paid to the landlord?

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to keep all or part of the security deposit paid by the tenant?

Background and Evidence

The tenancy began on October 1, 2012. Rent in the amount of \$925.00 was payable on the first of each month. A security deposit and pet deposit of \$700.00 was paid by the tenant. The tenancy ended on November 30, 2011.

Tenants Application

The tenant testified that on November 30, 2011, she emailed her forwarding address to the landlord.

The landlord testified that he never received that email from the tenant.

The tenant argues that out of all the emails sent to the landlord that is the only one the landlord claims not to have received. Filed in evidence is a large amount of emails

between the parties. I note there is no response or confirmation of receipt for the November 30, 2011 email, which contains the tenant forwarding address.

The landlord testified that on December 15, 2011, he searched the name of the tenant's spouse to locate an address for the tenant and issued the tenant a cheque for the amount of \$142.13. However, the cheque was never cashed by the tenant.

The tenant testified that on December 19, 2011, she did receive a cheque from the landlord and has not cashed that cheque. The tenant stated she did not cash the cheque as she felt it would be accepting the landlord position. The tenant stated she then filed her application for Dispute Resolution.

The landlord testified he returned to the tenant the balance which he was not claiming against the deposit and made a cross-application to keep the balance within the 15 days required by the Act. The landlord states the tenant has never provided him her written forwarding address, however, acknowledges receipt of an address for the tenant in her application.

Landlord's Application

The landlord testified that the tenant took down a light fixture and broke the fluorescent light bulb and dented the light fixture and is seeking compensation.

The tenant testified she took down the light fixture when she moved into the rental unit as it was hanging too low. The tenant stated when she tried to re-hang the fixture it was dropped and the fluorescent light bulb broke, which she has provided the landlord with a new fluorescent bulb. The tenant disputes that she did any damage to the light fixture.

The landlord testified that the tenant broke the glass on the end table and is seeking compensation for replacing the glass in the amount of \$51.44. Filed in evidence is a copy of the receipt.

The tenant testified she did break the glass on the end table, the tenant argues that she should not have to pay for the delivery charge of the glass as it was unreasonable for the landlord to have such a small piece of glass delivered.

The landlord testified the carpets were required to be cleaned as the tenant had a pet, and the pet might have soiled on the carpet. The landlord states that clause 2 of the tenancy agreement states he had the sole discretion whether they required cleaning. Filed in evidence is a copy of a receipt for carpet cleaning.

The tenant testified the carpets were professionally cleaned prior to her moving into the rental unit. The tenant states there was no requirement for the landlord to clean the carpets again, as her pet is a very small dog and is very clean. The tenant states her dog never soiled the carpet. The tenant states she should not be responsible for having the carpets cleaned as she and her pet were only in the rental unit for two months.

The tenant testified that the landlord has extinguished his rights to claim against the security deposit as he did not perform the move out inspection with the tenant.

The evidence of the landlord was that the tenant was not at the move –out inspection and he completed that with his spouse.

Analysis

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

Tenant's Application

In this case, the onus is on the tenant to prove she provided the landlord with her forwarding address in writing.

The evidence of the tenant was she provided her forwarding address to the landlord in an email dated November 30, 2011. The landlord's evidence was he never received that email from the tenant.

The legislation provides a number of service methods which may be used where landlord or tenant is serving documents. These methods are outlined in Residential Tenancy Policy Guideline12-1. There is no provision in the policy guideline, which allows email to be used as a method of service. Therefore, I find the tenant has not provided the landlord with her forwarding address in writing as required by the Act.

The documentary evidence filed by the tenant, shows the tenant was provide an opportunity to perform the move-out inspection, on the evening of November 30, 2011. That inspection did not take place with the tenant and the landlord completed the inspection with his spouse. The second opportunity was to take place on Sunday December 4, 2011.

Further, document evidence filed by the tenant shows the tenant wanted to bring an electrician to hang the light fixture at the move-out inspection, the landlord responds was not to bring this electrician as his credentials were an issue, and the landlord was not authorizing this person to come on to the property. The email response dated December 2, 2011, from the tenant states "I will not be coming on Sunday unless you should change your mind" [reproduced as written]. The tenant did not appear on December 2, 2011 to complete the inspection. Therefore, I find the tenant extinguished her rights to claim against the security deposit at the move-out inspection.

However, there was no oral testimony from either party on whether the parties participated in a move-in inspection and there is insufficient documentary evidence filed to make a finding on that issue. Therefore, I cannot determine who extinguished their rights first under the Act.

Base on all of the above, the tenant's application for the return of double the security deposit is dismissed and as the tenant has not been successful with her application the tenant is not entitled to recover the cost paid for filing her application.

Landlord's application

The parties agree the tenant broke the fluorescent light in the light fixture and the tenant replace the bulb. The parties disagree on the amount of damage to the light fixture and in the absent of any invoices of repair and photographic evidence. I find the landlord has not provided sufficient evidence to prove that a loss exists or the value of his loss. Therefore, the landlord request for compensation to replace the light fixture is dismissed.

The parties agree the tenant broke the glass in the end table. The tenant disputes the cost of having the glass delivered. The tenant had the option to have the table repaired prior to the tenancy ending, however that was not done. The landlord did mitigate his loss, by having the table repaired instead of replaced. The landlord has proven the cost to repair the table. Therefore, I find the landlord is entitled to compensation for the repair of the table in the amount of **\$51.44**.

The landlord is seeking to recover the cost of cleaning the carpets at the end of tenancy as the tenant had a pet. The signed tenancy agreement states the carpets are to be cleaned at the end of tenancy.

The Policy Guidelines states:

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets.

In this case, even though the tenant was only in the rental unit for two months, and her pet was very clean. The policy guideline states the tenant is responsible for having the carpets cleaned regardless of the length of tenancy. The tenancy agreement signed states that the tenant is responsible to have the carpets clean at the end of tenancy. The landlord has provided proof of having the carpets cleaned. Therefore, I find the landlord is entitled to compensation in the amount of **\$306.43**.

Therefore, I find the landlord is entitled to compensation in the amount of **\$407.87** comprised of the above amounts and the \$50.00 fee for filing the application.

I authorized the landlord to deduct \$407.87 from the \$700.00 security/pet deposit for damages as set out above. The tenant has received a cheque in the amount of \$142.12. Therefore, the balance owed to the tenant is \$150.01. I order the landlord to return to the tenant the balance owed and I grant the tenant a monetary order in that amount.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court should the landlord not return the balance owed to the tenant.

Conclusion

The tenant is granted a monetary order as set out above.

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 08, 2012.

Residential Tenancy Branch