

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Tenant is seeking a monetary order for the return of double the security deposit and recovery of the filing fee. The Landlord is seeking a monetary order for damage to the unit, site or property, for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing in person and gave testimony. The Tenant states that he did not receive any of the Landlord's documentary evidence. The Landlord is unable to give any details of how or if the evidence was submitted to the Landlord. The Tenant has submitted no documentary evidence. Based upon the direct testimony of both parties, I am satisfied that each has been properly served with the notice of hearing package on the other as deemed under the Act. As the Tenant has not received any of the Landlord's evidence he was given time to review the documentary evidence of photographs depicting the condition of the end of tenancy and the receipts submitted in support of costs incurred. I find that the Tenant was not served with the Landlord's documentary evidence and has not requested an adjournment nor is he disputing the contents of the documentary evidence. As such, I find that the documentary evidence is relevant and accept it for the hearing.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Tenant's claim for recovery of litigation costs are dismissed.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?
Is the Landlord entitled to a monetary order?
Is the Landlord entitled to retain the security deposit?

Background, Evidence and Analysis

Both parties agree that this Tenancy began in January of 2007 as shown in the submitted copy of the signed tenancy agreement by the Landlord. The monthly rent is \$700.00 payable on the 1st of each month and a security deposit of \$350.00 was paid. Both parties agree that no condition inspection report was completed by either party. Both parties also agree that the Tenancy ended on February 28, 2012. The Tenant states that he provided his forwarding address in writing to the Landlord sometime in mid-February of 2012, but is unsure of the exact date. The Landlord disputes this stating that she never received the Tenant's forwarding address in writing.

Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

As explained to the parties during the hearing the onus or burden of proof is on the party making the claim, in this case both parties are responsible as they have each made an application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The Tenant claims that the forwarding address in writing was given in mid-February, but the Landlord disputes this stating that none was given. The Landlord claims that she spoke with the Tenant's daughter after the end of tenancy who verbally told her that as the unit was unclean that the Landlord's could keep the security deposit in lieu of cleaning. The Tenant disputes this. I find in this aspect of the claim that the Tenant has failed to provide sufficient evidence to satisfy me that the forwarding address in writing was provided. On this portion of the claim I find that the Tenant is not entitled to compensation under section 38 (6) (b) of

the Act. I find that the Landlord was deemed served with the Tenant's address when the Tenant's application was filed on March 28, 2012 and served upon the Landlord. The Landlord filed for dispute resolution on April 3, 2012. However, I find that the Tenant is entitled to the return of the \$350.00 security deposit.

The Landlord seeks recovery of \$700.00 for unpaid rent for the month of February 2012. The Tenant disputes this stating that rent was paid and states that he has proof of such. The Landlord argues that no rent was paid. I find that the Tenant has not provided me with sufficient evidence that rent was paid to the Landlord and find on a balance of probabilities that the Landlord has established a claim for \$700.00 in unpaid rent for February of 2012. The Landlord is successful in this portion of her claim.

The Landlord also seeks recovery of \$200.00 for 10 hours of general cleaning and has submitted a receipt for the cost incurred and relies on photographs taken of the refrigerator and stove. The Tenant disputes this claim and states that the unit was clean when he left it. I find based upon a balance of probabilities that the Landlord has established a claim for the \$200.00 in general cleaning based upon the receipt and photographs submitted.

The Landlord seeks recovery of \$112.00 for carpet cleaning and has submitted a receipt from a contractor for work done and a photograph of the carpet. The Tenant disputes that there were any stains on the floor, but that the carpet probably needed vacuuming. I find that the Tenant has failed to provide sufficient evidence to satisfy me and that on a balance of probabilities based upon the receipt and photographs submitted by the Landlord that a claim has been established for the \$112.00.

I decline to make an order for either party in the recovery of the filing fees. The Landlord has established a total monetary claim of \$1,012.00. The Tenant has established a total monetary claim of \$360.58 (\$350.00 security deposit and \$10.58 accrued interest). In offsetting these amounts, I find that the Landlord is granted a

monetary order for \$651.42 under section 67 of the Act. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$651.42.

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: May 25, 2012.

Residential Tenancy Branch