



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, MNSD, MND, FF

Introduction

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

The tenant filed pursuant to the *Residential Tenancy Act* (the Act) on May 04, 2012 for Orders as follows:

1. A Monetary Order for compensation for loss under the Act, regulation or tenancy agreement - Section 67
2. Return of double the security deposit - Section 38

The landlord filed pursuant to the Act on June 13, 2012 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 recover the filing fee for this application - Section 72

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The tenant has since vacated from the rental unit. The parties were given opportunity to turn their minds to compromise and arrive at an agreed settlement to their dispute, but this process was unsuccessful.

Issue(s) to be Decided

Is the tenant entitled to the monetary amount claimed?

Is the landlord entitled to the monetary amount claimed?

Background and Evidence

The testimony of the landlord and the tenant is that this tenancy has been the subject of previous dispute resolution proceedings.

The rental unit is the subject of a verbal tenancy agreement between the landlord and tenant. The tenancy started in September 2011 (tenant claims September 15, 2011 – landlord claims September 01, 2011). The tenant claims they vacated December 31, 2011 in accordance with an Order of Possession. The landlord testified that in accordance with their information the tenant vacated on or before January 10, 2012.

The parties agree that rent in the amount of \$450.00 was payable each month and that this amount was inclusive of heat and laundry facilities. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$225.00, which the landlord still holds. The parties agree that at the start and end of the tenancy there were no condition inspections conducted by the parties.

The following is undisputed by the parties (the parties agree):

- the landlord is owed \$30 of unpaid rent for September 2011.
- The tenant provided the landlord a written request for the security deposit and their forwarding address; and, the landlord acknowledges receiving the letter March 16, 2012.
- The landlord attempted to provide the tenant with an oil-filled heater in early October 2011, but the tenant refused the unit as they had already purchased a heater.
- The laundry facilities for the rental unit were compromised / unavailable to the tenant for a period during the tenancy. The tenant claims the unavailability of the facilities began the 4th. week into the tenancy (mid-October). The landlord claims that the months of November and December were affected.

The tenant claims they have not received their security deposit back and are claiming double the amount. The tenant also claimed compensation for heat at \$30 per month

for October, November and December 2011; however, during the hearing the tenant did not dispute that heat was provided during these months, but rather, they claimed their cost of a portable heater. The hearing did not have benefit of proof that the tenant purchased a heater. The landlord provided a receipt for the heater the landlord had purchased for the tenant.

The landlord claims that since the tenant did not vacate December 31, 2011 and remained until the first third of January 2012, the tenant must pay rent for January 2012. The landlord provided 2 statements from other tenants stating that the tenant remained in the rental unit into January 2012 – at least until January 07, 2012. The landlord claims loss of revenue equivalent of one month's rent in the amount of \$450.00

The landlord claims that at the end of the tenancy the tenant left the rental unit unclean and required cleaning. The landlord provided several photographs in support of this claim. The landlord also provided a statement from the individual paid by the landlord to clean the rental unit stating they were paid \$60 by the landlord. The landlord claims \$60.00 for cleaning. The tenant claims they left the rental unit clean.

The landlord further claims compensation in the amount of \$850.00 for damage to the unit – consisting primarily of purportedly damaged carpeting. The landlord claims they have not replaced the carpeting, but provided their own estimate of the speculated cost to remediate the damage. The tenant neither confirmed nor denied the claimed damage to the carpet.

The landlord is also claiming \$130.00 for 2 damaged chairs which they claim the tenant damaged. The landlord provided photographs of the claimed damaged chairs. The tenant neither confirmed nor denied they damaged the chairs.

The parties' claims are summarized as follows:

Tenant – double security deposit of \$225.00	\$450.00
Heat / heater x 3 months	90.00
<i>claim</i>	\$660.00
Landlord – unpaid rent September 2011	30.00

Loss of revenue – January 2012	450.00
Cleaning at end of tenancy	60.00
Damage to rental unit – carpeting	850.00
2 damaged chairs	160.00
<i>claim</i>	<i>\$1550.00</i>

Analysis

In respect to the parties claims for compensation, it must be noted that the burden of proving claims of loss rests on the claimant for compensation - who must establish, on a balance of probabilities that they have suffered a loss due to the other parties' neglect, or failure to comply with the Act. And, if so established, did the claimant take reasonable steps to mitigate or minimize the loss? Section 7 of the Act outlines the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, a party must satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the loss occurred solely because of the actions or neglect of the Respondent in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

Each party bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a

contravention of the *Act* on the part of the other. Once that has been established, a claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, a claimant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred.

Tenant's claim

On preponderance of the evidence and on the balance of probabilities I find the tenant has not met the test for loss in respect to their claim for heat or a heater. I find the tenant was provided heat, and the tenant has not provided evidence they paid for a heater. In the absence of evidence from the tenant in support of their claim for compensation, I prefer the landlord's evidence that they provided a heater and electricity for heat. This portion of the tenant's claim **is dismissed**, without leave to reapply.

On preponderance of the evidence and on the balance of probabilities I find the tenant has met the test for loss in respect to their claim they were not provided laundry facilities as agreed in the verbal tenancy agreement. Having considered the evidence I find the tenant is therefore owed compensation in the amount of **\$75.00**, without leave to reapply.

I find that 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 no later than January 10, 2012, and that the tenant provided (their) forwarding address in writing on March 16, 2012. I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing. Therefore, I find that the tenant has established a claim for the security deposit of \$225.00, and double the base amount of the security deposit in the amount of \$225.00, for a sum of **\$450.00**.

Landlord's claim

I find that the parties agree the landlord is owed **\$30.00** of September 2011 rent, without leave to reapply.

On preponderance of the evidence and on the balance of probabilities, I find I prefer the landlord's evidence that the tenant remained in the rental unit at least until January 07,

2012. Therefore, I grant the landlord the pro-rated mount of rent for January in the aggregate of **\$102.00**, without leave to reapply.

On preponderance of the evidence and on the balance of probabilities, I find that I prefer the evidence of the landlord that the tenant left the rental unit unclean, and that I accept the landlord's claim for cleaning in the amount of \$60.00 is a reasonable amount. Therefore, I grant the landlord **\$60.00** for cleaning, without leave to reapply.

On preponderance of the evidence and on the balance of probabilities – while I find that the tenant left the rental unit unclean, I am not persuaded by the landlord's evidence that the carpeting in the rental unit is sufficiently compromised that it requires replacement. Further, the landlord has not provided any evidence to support their claim that the damage in this case is \$850.00. I find the landlord has not met the test for loss in respect to this portion of their claim. As a result, **I dismiss** this portion of their claim, without leave to reapply.

On preponderance of the evidence and on the balance of probabilities, I find that the landlord has not met the test for loss in respect to their claim for 2 damaged chairs. As a result, **I dismiss** this portion of their claim, without leave to reapply.

As the landlord was partly successful in their claim, they are entitled to recover the filing fee in the amount of **\$50.00**.

Calculation for Monetary Order

Tenant – double security deposit of \$225.00	\$450.00
Heat / heater x 3 months	0.00
award	\$525.00
Landlord – unpaid rent September 2011	30.00
Loss of revenue – January 2012	102.00
Cleaning at end of tenancy	60.00
Damage to rental unit – carpeting	0.00
2 damaged chairs	0.00
Filing fee	50.00

award	\$242.00
<i>Monetary Order for tenant (difference of awards)</i>	<i>\$283.00</i>

Conclusion

The applications of the parties were, in part, granted, without leave to reapply.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$283.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: July 04, 2012

Residential Tenancy Branch