



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, FF
Tenant: MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began as a month to month tenancy on June 1, 2012 with a monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00 and a pet damage deposit of \$200.00 paid on May 19, 2010. The parties agree the tenancy ended on May 31, 2012.

The landlord testified that she did not own the house but that she rented the whole house from the owner and she rented out the rental unit in the basement of the house to this tenant. She goes on to say that the owner of the house had nothing to do with the rental arrangement she had with the tenant but that he did authorize or make repairs or completed maintenance when required.

The landlord acknowledged in her written submission that on May 1, 2012 the tenant provided her with notice of her intention to vacate the rental unit by May 31, 2012 and that the tenant provided her forwarding address in the same notice. The landlord submits that she did provide the tenant with a written explanation as to why she would not be returning the deposits.

The parties agree that no condition inspection reports were completed but the landlord has provided photographs that she attributes to being taken prior to the start of the tenancy. Both parties have provided several photographs at the end of the tenancy.

The landlord submits that her before photographs were taken primarily when they were painting the unit prior to the start of the tenancy. The landlord submits the tenant's photographs are "photoshopped" because the colours of the walls are not the same as the true colours that the unit was painted prior to the start of the tenancy.

The tenant submits that the photograph that the landlord submits as proof of the condition of the floor at the start of the tenancy contains a couch that belongs to the landlord and not to the previous tenants. The landlord testified that she did not have any tenants previous to this tenant but that her family had been using the rental unit and the photograph was taken a couple of months prior to the start of the tenancy.

The tenant also submits that the landlord's photographs showing the rental unit required cleaning were taken prior to the end of the tenancy as the tenant had moved most of her belongings out and came back to clean by May 31, 2012 and has submitted her own photographs showing the unit as reasonably clean. The landlord testified that she did not have a key to the rental unit, as she and the owner of the house had discussed it but found that it was not necessary for her to have an extra key to the unit.

While the landlord has provided several photographs of the bathroom at the end of the tenancy; during the period while renovations were being made; and after renovations were complete, she has not provided any photographs of the bathroom at the start of the tenancy. The landlord has also not provided photographs of the blinds or the window sill at the start of the tenancy.

The landlord testified that even though she had agreed to have her son move into the rental unit she felt that it was not the best solution and she had decided that she would continue to show the rental unit other potential tenants and if she found the "perfect tenant" she would rent to them.

The landlord also submits that because there were so many repairs required at the end of the tenancy she was not able to let her son move in to the rental as he had planned for June 1, 2012 and had to take alternate accommodation because he had already given notice at his previous residence and therefore the landlord lost revenue for the month of June 2012.

The tenant submits that the landlord had informed her by text message on May 20, 2012 (copy of text message provided into evidence) that her son was not going to move into the rental unit. In addition the tenant submitted a text message dated May 20, 2012 asking the tenant permission to access the rental unit as she intended to show the unit to potential tenants on May 20 and May 22, 2012.

The landlord seeks the following compensation:

Description	Amount
Loss of June 2012 rent	\$1,100.00
Cleaning Costs – 12 hours at \$25.00 per hour	\$300.00
Blind replacements	\$162.20
Light bulb replacements	\$12.21
Window sill repair	\$95.00
Bathroom renovations	\$1,605.00
Living room floor repair	\$1,300.00
Total	\$4574.41

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit and pet damage deposit or file an Application for Dispute Resolution to claim against the deposits. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security and pet damage deposits.

As the landlord confirmed in her testimony the tenancy ended on May 31, 2012 and the landlord had received the tenant's forwarding address on May 1, 2012. As such, I find the landlord had until June 15, 2012 to either return the deposits or file an Application for Dispute Resolution to claim against them. As the landlord filed her Application to claim against the deposits on August 20, 2012 I find the landlord has failed to comply with Section 38(1) and I therefore find the tenant is entitled to the return of double of both deposits.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In order to establish that there was damage to the rental unit and that it resulted from a violation of the *Act*, regulation or tenancy agreement the burden of proof is on the landlord, in this case, to provide sufficient evidence of the condition of the rental unit prior to the start of the tenancy; the condition of the unit at the end of the tenancy; and any evidence to support that it was the tenant that caused the damage during the time the tenant had occupancy of the rental unit.

In the absence of any documentary evidence such as a move in condition inspection photographic evidence may be sufficient to establish the condition of the rental unit at the start of the tenancy. However, these photographs must be taken at a time that is close to or immediately preceding the tenant's occupancy while the rental unit is vacant and not in use by any other party.

As such, photographs taken a "couple of months" prior to the tenancy when the landlord's son is lounging on a couch with other furniture in the unit will not provide an adequate record of the condition of the unit at the start of the tenancy. Further photographs taken while painting two of the rooms in a rental unit do not provide an accurate record of the condition of the rooms that are not in the photographs or in fact that they were even painted at the same time.

For these reasons, I find the landlord is not able to establish the condition of the rental unit at the start of the tenancy to attribute any of the damage that she is claiming for (blinds, window sill repair, bathroom renovations, and living room floor repair) was caused during the period that the tenant had occupancy of the rental unit.

As the landlord has not established the condition at the start of the tenancy I find that she has not provided sufficient evidence to establish the tenant has caused any of this damage. In addition, since the landlord has not established the tenant is responsible for the damage, I find the landlord cannot therefore hold the tenant responsible for any lost revenues due to renovations.

In addition, specifically in relation to the landlord's claim for compensation to repair the bathroom, I accept, from the landlord's own testimony, that the cause of the damage was a leak from an upstairs bathroom and that it was mostly internally found inside the wall cavities. From the photographic evidence provided from the landlord and the tenant's testimony that the owner of the house had been in the bathroom on at least 2 occasions during the tenancy I find the landlord has not established that the appearance of the bathroom was sufficient enough to claim that the tenant was negligent in reporting any problems with the bathroom.

Section 35 of the *Act* requires a landlord to offer the tenant at least 2 opportunities to complete a move out inspection and despite the landlord's testimony that the tenant approached the owner of the house instead of the landlord does nothing to exempt the landlord from the obligation to complete the move out inspection and to complete it with the tenant present.

In relation to the landlord's claim for cleaning again in the absence of a move out condition inspection or its subsequent report, photographic evidence might be relied upon to establish the condition at the end of the tenancy. However, as both parties have provided photographs that show the rental unit in very different conditions (in terms of cleanliness) I find there is a burden on the landlord to provide additional evidence to establish her claim. The tenant submits the landlord took her photographs before the tenant had cleaned the rental unit. The landlord testified that she did not

have keys to the rental unit and therefore could not have taken these pictures until after the end of the tenancy.

From the landlord's insistence throughout this hearing that the owner of the property had washed his hands of dealings with the tenant because this was a tenancy between the landlord and the tenant and not the owner and because the landlord had testified that she and her family used the rental unit prior to renting this unit to the tenant I find it unlikely that the landlord would not have a key to the rental unit.

As such, I accept the possibility existed that the landlord took the photographs showing the cleanliness of the rental unit prior to the tenant's completion of cleaning in the rental unit and such I find the landlord's evidence in this instance is not sufficient to establish the rental unit required cleaning.

Despite the tenant's acknowledgement that there were light bulbs that need replacing, Residential Tenancy Policy Guideline 1 states the tenant is responsible for replacing light bulbs in his or her premises **during** the tenancy, there is no requirement to replace light bulbs at the end of the tenancy.

Conclusion

Based on my findings above, I dismiss the landlord's Application in its entirety, without leave to reapply.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,500.00** comprised of double the amounts of her security and pet damage deposits. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: September 11, 2012.

Residential Tenancy Branch