



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of double her security deposit as a result of the landlord's alleged failure to comply with section 38 of the *Act*; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by registered mail on July 6, 2012. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on August 24, 2012. I am satisfied that both parties served these packages and their written evidence to one another in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid utilities? Is the landlord entitled to a monetary award for losses and damage arising out of this tenancy? Which of the parties are entitled to the tenant's security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover their filing fees for their applications from one another?

Background and Evidence

This fixed term tenancy commencing on September 1, 2011 was scheduled to end on June 30, 2012. Monthly rent was set at \$1,700.00, payable in advance on the first of each month. The tenant paid an \$850.00 security deposit on July 26, 2011. After the tenant vacated the rental premises on June 1, 2012 on the basis of a mutual agreement between the parties, the landlord forwarded a cheque for \$265.74 to the tenant on June 13, 2012. As the tenant did not consider this to be a proper return of her security deposit, the tenant has not cashed that cheque, although she continues to hold it.

The tenant's application for a monetary award of \$1,565.74 included the following items:

Item	Amount
Return of Double Security Deposit due to Landlord's Failure to Comply with Provisions of Section 38 of the <i>Act</i>	\$1,700.00
Tenant's Bed which the Landlord Agreed to Purchase at the end of the tenancy	150.00
Less Utilities Owed by Tenant at end of the tenancy	-284.26
Total Monetary Award Requested	\$1,565.74

The landlord's application for a monetary award of \$516.27 included the following:

Item	Amount
Unpaid Hydro and Gas Utilities	\$284.26
Damage to Bedroom Floor	916.27
Landlord's June 13, 2012 Cheque	265.74
Less Tenant's Security Deposit	-850.00
Less Landlord's Agreement to Purchase Tenant's Bed at the end of the tenancy	-150.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	\$516.27

Analysis – Applications Regarding Tenant's Security Deposit

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section

38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

In this case, the landlord and his wife confirmed that they received the tenant's forwarding address in writing on June 1 or June 2, 2012, when they entered the rental unit and found the tenant's note containing her forwarding address. After reviewing the condition of the rental unit, the landlord returned \$265.74 of the tenant's \$850.00 security deposit by way of a June 13, 2012 cheque, an amount which he believed was appropriate given the damage and unpaid utility bills outstanding.

Based on the undisputed evidence, the landlord did not return the security deposit in full within 15 days of receiving the tenant's forwarding address. The landlord's application for dispute resolution to obtain authorization to retain a portion of the tenant's security deposit was not filed until July 2, 2012, well after the expiration of the 15-day time limit for doing so. The parties agreed that the tenant did not provide her written authorization to allow the landlord to retain any portion of her security deposit. Based on this evidence, I find that the landlord has neither returned the security deposit in full within 15 days of receipt of the tenant's forwarding address, nor has he filed for dispute resolution within the required 15-day time limit for doing so. The tenant is therefore entitled to a monetary order amounting to double the value of her security deposit with interest calculated on the original amount only. No interest is payable over this period. As the tenant continues to hold the landlord's June 13, 2012, which is still negotiable, I order her to negotiate that \$265.74 cheque and allow her a monetary award of \$584.26 for the remainder of her original security deposit plus a monetary award of \$850.00 for the landlord's failure to comply with the requirements of section 38 of the *Act*.

Analysis- Remainder of the Applications

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage

and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The parties provided conflicting oral, photographic and written evidence with respect to the landlord's claim for a monetary award for damage to the bedroom floor that the landlord maintains arose during this tenancy. The landlord submitted photographs of damage to the hardwood flooring under the tenant's bed as well as a copy of a June 29, 2012 estimate from a flooring restoration company indicating that it would cost \$916.27 to repair the damage to the bedroom floor in this rental unit. The landlord testified that the repairs have not been undertaken for this floor and that the landlord may wait until next summer to conduct these repairs. As of August 28, 2012, the landlord re-rented the premises to another tenant for a monthly rent of \$1,750.00, an increase of \$50.00 for this rental unit. The landlord did not dispute the tenant's testimony that there was dry-rot damage to some of the same floor, but disagreed with the tenant's claim that the damage in question was related to dry rot.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. In this case, the landlord and his wife confirmed that they did not prepare a move-in condition inspection report at the commencement of this tenancy. The landlord's wife testified that the tenant did not choose to participate in a scheduled joint move-out condition inspection, but the landlord and his wife conducted their own move-out condition inspection of the premises. However, they agreed that they did not prepare a move-out condition inspection report, nor did they send a copy of a report to the tenant.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 36(1) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

36 (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

Without information setting out the condition of the floor in question at the beginning and end of this tenancy, I find that the landlord's eligibility to claim for damage is limited. I also find that the landlord has not incurred any actual losses arising out of this damage as he has not repaired the damage and has in fact rented it out to a new tenant for more than the original tenant was paying. Under these circumstances, I find that the landlord has not substantiated his claim for a monetary award for damage or losses arising out of this tenancy. I dismiss this portion of the landlord's claim without leave to reapply.

Based on the undisputed oral and written evidence, I find that the landlord is entitled to a monetary award of \$284.26 for unpaid utilities arising out of this tenancy. The parties also agreed that the landlord has not paid the tenant the \$150.00 that the landlord committed to pay for the tenant's bed at the end of this tenancy. As this feature of both applications was not in dispute, I include a monetary award in the tenant's favour of \$150.00 for this item.

As both parties have had some success in their applications, the parties both bear the costs of filing their applications for dispute resolution.

Conclusion

I issue a monetary Order in the tenant's favour in the following terms which enables the tenant to obtain a return of her security deposit, a monetary award for the landlord's failure to comply with section 38 of the *Act*, authorization to negotiate the cheque for the portion of the security deposit returned to her by the landlord in June 2012, an agreed payment for the tenant's bed, less the amount of unpaid utilities outlined in this decision:

Item	Amount
Return of Remaining Portion of Tenant's Security Deposit (\$850.00 - \$265.74 = \$584.26)	\$584.26
Monetary Award Equivalent to Original Value of Tenant' Security Deposit due to Landlord's Failure to Comply with Provisions of Section 38 of the <i>Act</i>	850.00
Tenant's Bed which the Landlord Agreed to Purchase at the end of the tenancy	150.00
Less Utilities Owed by Tenant at the end of the tenancy	-284.26
Total Monetary Order	\$1,300.00

As outlined above, I order the tenant to negotiate the landlord's June 13, 2012 cheque in order to complete the return of her security deposit.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 14, 2012

Residential Tenancy Branch