



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross-applications. The landlord applied to retain all or part of the security deposit. The tenant applied for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The hearing commenced June 26, 2012 and was adjourned to a later date when I determined I could not sufficiently understand the tenant's spoken English. The tenant agreed that she would appear at the reconvened hearing with a person that would assist her with her verbal submissions. At the reconvened hearing the tenant appeared with another person. I explained to the tenant and her assistant that the assistant's presence was requested as I had difficulty understanding the tenant at the first hearing. The person there to assist the tenant proceeded to inform me that the tenant does not have difficulty understanding English as the tenant has a Master's degree. The tenant proceeded to provide her responses and submissions rather than the person there to assist her. I requested the person assisting the tenant to provide assistance on at least two occasions; however, it was apparent the person there to assist the tenant was not participating in the hearing. Having provided the tenant the opportunity to have assistance at the hearing I have made this decision based upon the documentary evidence before me and the verbal testimony that I understood to the best of my ability.

The tenant dealt with both the owner and a property manager/agent during the tenancy. The owner was represented by the property manager(s)/agent(s) during the hearing.

Issue(s) to be Decided

1. Has the landlord established an entitlement to retain all or part of the tenant's security deposit?
2. Has the tenant established an entitlement to receive compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The following information was undisputed:

- The tenancy commenced March 1, 2011.
- The tenant paid a \$925.00 security deposit and a \$75.00 key deposit.
- The tenant was to vacate the rental unit at the end of March 2012 but did not fully vacate the unit until April 6, 2012.
- The tenant and landlord participated in a move-out inspection together on April 7, 2012.

On the move-out inspection report the tenant authorized, in writing, the landlord to make deductions from the security deposit and key deposit for: painting (\$100.00 + HST); carpet cleaning (\$90.00 +HST); key replacement (\$65.00 +HST) and fines (\$650.00). The above deductions total \$935.60.

Landlord's application

Although the landlord had the tenant's written consent to make deductions from the tenant's security deposit totalling \$935.60 the agent explained that he filed this application because he knew the tenant disagreed with the landlord charging for the strata fines and he informed the tenant he would take that matter to dispute resolution.

The tenant was of the position she signed the move-out inspection report without reading or understanding what she was signing. The tenant was of the position that all amounts appearing on the move-out inspection report would be subject to this dispute.

As explained in the analysis portion of this decision, I proceeded to hear the parties with respect to the strata fines only.

The strata fines charged to the owner during this tenancy total \$650.00. The total of \$650.00 is comprised of the following amounts:

Move-In fee	\$ 200.00
1 st missed fire inspection fine	50.00
2 nd missed fire inspection fine	200.00

Improper garbage disposal fine	<u>200.00</u>
Total	\$ 650.00

The tenant agreed that she was responsible for the Move-In Fee and the improper garbage disposal fine. The landlord's agent acknowledged that the owner had agreed to absorb the 1st fire inspection fine. According, the only fine in dispute was for the 2nd missed fire inspection.

The landlord's agent submitted that after the first fire inspection was missed the owner had obtained the tenant's verbal agreement that she be available for the second fire inspection. When the second fire inspection was to take place the tenant was home but did not hear the knock at the door and did not let the fire inspector in the unit. The fire inspector did not enter and the strata council fined the owner \$200.00 for the missed inspection. In addition, the landlord's agent submitted, based upon his experience with strata councils and condominium units, that the strata council posts notices and slides notices of upcoming fire inspections under the door of units.

The tenant acknowledged she missed both the first fire inspection and the second fire inspection. The first inspection took place while she was out of town and on the day of the second inspection she did not hear the knock at the door. The tenant claimed the owner contacted her after the second missed fire inspection and told her that he would pay the fines.

The tenant confirmed that the owner had keys to the rental unit. It was undisputed that the owner or owner's agent did not serve the tenant with a Notice of Entry or attend the unit for the second fire inspection.

Tenant's application

The tenant applied for monetary compensation totalling \$8,500.00. Below, I have summarized each of the items for which the tenant is seeking compensation and the landlord's response.

Compensation for 2 Month Notice – \$3,700.00

The tenant claimed she was in receipt of a 2 Month Notice to End Tenancy for Landlord's Use from the owner of the property. The tenant withheld the last month's rent as compensation. The tenant is seeking the equivalent of two month's of compensation since the unit was put up for sale and not used by the landlord's daughter as she was told when the landlord gave her the 2 Month Notice.

The landlord's agent claimed he was in possession of the owner's file and there is not a 2 Month Notice in the file. The landlord acknowledged the tenant withheld last month's and that the tenant and owner came to some sort of agreement to end this tenancy. The landlord's agent did not dispute that the rental unit was put up for sale after the tenancy ended.

The tenant could not produce a copy of the 2 Month Notice. She claimed she had thrown it away as she did not realize she should keep a copy. The tenant pointed to an email written to the landlord's agent to substantiate her position that a 2 Month Notice was served upon her.

Mould - \$3,000.00

The tenant submitted there was mould in the corner of her bedroom ceiling for approximately three months. Upon notifying the landlord of the mould the landlord attended the unit, sprayed the mould with a solution, gave the tenant the solution and advised her to continue to spray the mould and leave the windows open. The tenant followed the landlord's instructions and the mould disappeared. The tenant claimed she did not use her bedroom for a period of time as the mould gave her headaches and interfered with her ability to concentrate. The tenant is seeking compensation of \$1,000.00 per month for three months.

The landlord's agent submitted that he had no paperwork from the owner pointing to a mould issue.

Key for Unit - \$450.00

The tenant submitted that it took three months to obtain a third key from the landlord. The tenant was of the position that the tenant was entitled to three keys since the landlord was aware that the tenant had an occupant stay with her and the co-tenant occasionally. The tenant stated she was inconvenienced by the lack of a third key and is seeking compensation of \$150.00 per month.

The landlord's agent submitted that there were only two named tenants on the tenancy agreement and the landlord provided two keys initially.

Key for mailbox - \$400.00

The tenant submitted that she lost her mailbox key and did not receive a replacement from the landlord despite asking for one. Eventually, the tenant paid for a replacement key herself. The tenant is seeking compensation of \$200.00 per month for two months – the time period she was without a mailbox key.

The landlord's agent submitted that an email was sent to the tenant on January 30, 2012 to enquire as to whether the tenant found her mailbox key. No response was received from the tenant so the landlord assumed this was no longer an issue.

Additional moving fee - \$150.00

The tenant submitted that the elevator was not available at the scheduled time when she moved into the unit. This caused the tenant to have to pay the moving company an extra \$150.00. The tenant paid cash to the movers and does not have a receipt.

Broken Shelf in Fridge - \$1,200.00

The tenant submitted that the fridge has a broken shelf and she was unable to use its full capacity. The tenant submitted that she complained of this to the landlord's agent who in turn told her to contact the owner. When the tenant contacted the owner the owner's response was that the tenant was not living in a five star hotel. The tenant is seeking compensation of \$100.00 per month for 12 months.

The landlord's agent acknowledged that when a tenant seeks repairs the tenant is referred to the owner. The agent submitted that had the tenant come to the agent after the owner refused to address the issue the agent could have dealt with the owner. Since the tenant did not come back to the landlord's agent the agent was unaware that this continued to be an issue for the tenant.

Analysis

Upon consideration of the evidence before me, I provide the following reasons and findings with respect to each application.

Each party has filed a monetary claim against the other. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's Application

The Act provides that a landlord may obtain a tenant's written consent to make deductions from the security deposit, including deductions for damage if the landlord has complied with condition inspection requirements of the Act.

In this case, the tenant signed the following statement on the move-out inspection report:

I agree with the amounts noted above and authorize deduction of any Balance Due Landlord from my Security Deposit and/or Pet Deposit.

The onus is upon the party signing a document to read and understand the document they are signing. Signing a document and then claiming you did not read it before signing it is not a basis to rescind the agreement. Ordinarily I would uphold the written authorization already provided by the tenant; however, in this case, I was provided testimony by the landlord that he had agreed to file an Application for Dispute Resolution to obtain a decision about responsibility for the strata fines. Therefore, I have considered the matter of the strata fines only and I find no basis under the Act to reverse or otherwise re-consider the other deductions authorized by the tenant.

As provided in the background section of this decision, the only strata fine remaining in dispute is the fine for the second missed fire inspection. I proceed to analyze responsibility for that fine below.

In reading the letter to the owner dated January 10, 2012 I note that the owner was issued a fine because of a violation of the bylaw 8.1 that requires: "An owner, tenant, occupant or visitor must allow a person authorized by the strata corporation to enter the strata lot" with 48 hours notice. Contravention of this bylaw two times resulted in the second fine of \$200.00 that is under dispute.

The strata council has held the owner responsible for violation of the strata bylaw and the owner wishes to recover the resulting fine from the tenant.

It is undisputed that the tenant was home on the day of the second fire inspection and she did not answer the door to allow the fire inspector in to the unit. In order to succeed with a monetary claim against the tenant the landlord must show that the tenant violated the Residential Tenancy Act (the Act), Regulations or tenancy agreement.

The Act permits a landlord to obtain a tenant's verbal consent to enter the unit for lawful purposes, including inspections. The Act also permits a landlord to give the tenant a written 24 hour notice to enter the rental unit. With the tenant's consent or upon serving the tenant a proper notice of entry the landlord is permitted to enter the rental unit even if the tenant is not home or does not answer the door. Having heard the owner has keys to the rental unit I find insufficient evidence that the tenant precluded or otherwise interfered with the landlord's ability to enter the unit on the date of the second fire inspection.

The owner's agent submitted that the owner, or the owner's agent, did not attend the rental unit for purposes of letting the fire inspector in for the second inspection because the owner had the tenant's agreement that she would do so. However, the tenant denied that she reached such an agreement with the owner. In the absence of the owner at the hearing, I find the agent's submission that there was such an agreement to be hearsay and I give more weight to the tenant's testimony. Accordingly, I find the landlord has not met its burden to establish that the tenant violated the Act, regulations or tenancy agreement by failing to let the fire inspector in for the second inspector.

In summary, the landlord is authorized to make the following deductions from the tenant's security deposit and key deposit:

As agreed by the tenant on the inspection report –	
Carpet cleaning	\$ 90.00 + HST
Painting	100.00 + HST
Keys	<u>65.00 + HST</u>
Sub - Total	\$ 285.60
Sub-total	\$285.60
Strata fees and fines –	
As agreed by tenant at hearing –	
Move-in fee	\$ 200.00
Improper garbage disposal fine	200.00
Missed fire inspection fines awarded in this decision	<u>Nil</u>
TOTAL DEDUCTIONS PERMITTED	\$ 685.60

As the landlord is holding the security deposit and key deposit totalling \$1,000.00 I order the landlord return the balance of \$314.40 to the tenant immediately.

Tenant's application

Compensation for 2 Month Notice

Section 51 of the Act provides compensation to tenants who receive a 2 Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the Act. The tenant is seeking compensation under this part of the Act. The difficulty in this case is that the tenant has been unable to produce a copy of the 2 Month Notice and the landlord's agent claims he is unaware of one in existence. The email the tenant pointed to during the hearing does not satisfy me that a 2 Month Notice was served upon her.

As the tenant has the burden to show she received a 2 Month Notice in order to receive compensation under section 51 of the Act, I find she has not met that burden and this portion of her claim fails.

Mould

The tenant provided photographs depicting some mould at the corners of the wall and ceiling and I accept that there was mould in the rental unit. However, the tenant's own evidence satisfied me that the landlord responded to the tenant's complaint that there was mould and that the landlord provided an effective treatment for the mould.

Therefore, I find the landlord complied with his requirement to repair and maintain the rental unit.

I find insufficient evidence from the tenant that she was unable to use the bedroom for three months as she submitted. Nor was I provided medical records to corroborate her submission that her health suffered as she claimed.

Finally, I find the tenant's request for compensation \$3,000.00 to be excessive compared to the monthly rent.

In light of the above, I dismiss the tenant's request for compensation for mould.

Key for unit

The Act requires a landlord to provide a key for each tenant. In this case, I heard that the landlord provided two keys and there were two tenants named on the tenancy agreement. Therefore, I find the tenant has not established that the landlord violated the Act.

In the absence of a copy of the tenancy agreement I find the tenant has not established that the landlord had agreed to provide the tenant with a third key as a term of tenancy. Therefore, I find the tenant has not established the landlord violated the tenancy agreement.

As the tenant has not established that the landlord violated the Act, Regulations or tenancy agreement, the tenant has not established an entitlement to compensation from the landlord for keys and this portion of the tenant's claim is dismissed.

Key for mailbox

The tenant was provided a key for the mailbox at the beginning of the tenancy and the tenant lost that key. The tenant submitted that she eventually had the lock replaced. The Act does not require a landlord to replace a key lost by the tenant. However, if the tenant does lose a key, the landlord is permitted to charge the tenant the direct cost of replacing the key.

I find insufficient evidence the landlord violated the Act in not replacing the key. Further, it is unclear to me why the tenant waited months to have the lock replaced and did not respond to the landlord's enquiry as to the status of the mailbox key. Thus, I also find the tenant failed to take reasonable action to minimize her loss.

For all of these reasons, this portion of the tenant's claim is dismissed.

Additional moving fee

The tenant has failed to provide verification that she incurred an additional cost of \$150.00 due to a violation of the landlord. Therefore, this portion of the tenant's claim is dismissed.

Broken shelf in Fridge

It is undisputed that a shelf is broken in the fridge and that the tenant's request for repair to the owner was unheeded. This difficulty with this claim is that the tenant took no further action by redirecting the complaint to the landlord's agent or filing an Application for Dispute Resolution seeking a repair order. Rather, the tenant allowed 12 months to elapse and then sought compensation for those 12 months. Sitting idly by while a monetary claim grows fails to satisfy the tenant's obligation to take reasonable steps to minimize the loss. I further find the tenant's claim for \$1,200.00 to be excessive given the remainder of the fridge was working and one could purchase a whole new fridge for \$1,200.00.

For all of these reasons, I dismiss this portion of the tenant's claim.

FILING FEE and MONETARY ORDER

I have made no award for recovery of the filing fee paid for either application.

The landlord has been ordered to return the balance of the security deposit and key deposit, in the amount of \$314.40, to the tenant. The tenant's application has been dismissed entirely. Therefore, the tenant is provided a Monetary Order in the amount of \$314.40 to serve upon the landlord and enforce as necessary.

Conclusion

The landlord was partially successful in this application. The tenant's application was dismissed entirely. The landlord has been ordered to return \$314.40 of the tenant's security deposit and key deposit to the tenant immediately. The tenant has been provided a Monetary Order in this amount to ensure payment is made.

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