



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNSD FF
For the tenant: MNDC MNSD FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied to keep all or part of the security deposit, and to recover the filing fee.

The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for return of all or part of the security deposit, and to recover the filing fee.

The tenant and an agent for the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. The tenant confirmed receipt of the landlord’s evidence package and stated that he had the opportunity to review the evidence prior to the hearing. The agent for the landlord (the “agent”) testified that she did not receive a one page photocopy of receipts that the tenant stated he served. As a result, the one page photocopy of the tenant was excluded due to the disputed testimony regarding service of the tenant’s evidence. As an alternative, the tenant was provided the opportunity to speak to his one page of evidence through oral testimony.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The landlord withdrew the monetary portions of her claim relating to photo finishing and registered mail as there is no remedy under the *Act* to claim for those types of expenses. As a result, the landlord's monetary claim was reduced to \$225.00 for cleaning expenses and \$50.00 for the filing fee.

Issues to be Decided

- Is the landlord entitled to a monetary order for cleaning expenses?
- Is the tenant entitled to the return of all or part of his security deposit?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2008. According to the written tenancy agreement provided as evidence prior to the hearing, the tenancy began as a six month fixed term, and reverted to a month to month tenancy after the initial term expired. Rent in the amount of \$650.00 is due on the first day of each month and was not increased during the course of the tenancy. A security deposit of \$325.00 was paid at the start of the tenancy. A \$50.00 key deposit was also paid at the start of the tenancy. The tenant claims he paid an additional fee for another key, however, failed to provide documentary evidence to corroborate his claim. The tenant disputed the amount of the security deposit which will be addressed later in this Decision.

The tenant vacated the rental unit on June 30, 2012. At the end of the tenancy, the parties agree that the landlord returned the \$50.00 key deposit. The tenant stated to the landlord that the rental unit was left clean; however, upon inspection the agent states the rental unit was very dirty. The landlord submitted 42 colour photos which the agent states were taken July 4, 2012. The agent stated the photos show the condition of the rental unit after the tenant claims he cleaned it. The tenant disputed the colour photos by stating that he believed the rental unit was clean. The tenant also disputed why he was served in August with the photos if the photos were taken at the end of June or early July, 2012. The agent stated that he was served with the photos after they were developed and was included with all of the other evidence from the landlord to support the landlord's claim.

The tenant testified that he vacuumed the carpets, however, did not steam clean or shampoo the carpets prior to vacating the rental unit. The landlord is claiming \$225.00 for 15 hours of cleaning at \$15.00 per hour.

A witness for the landlord provided affirmed testimony that he took the photos of the rental unit which were submitted as evidence for the hearing. According to the witness, the photos were taken at the end of June 2012. The tenant disputed this testimony by indicating that the agent testified earlier in the hearing that the photos were taken July 4, 2012.

The tenant claims he was present for a move-out condition inspection on July 4, 2012, however, refused to sign the move-out condition inspection report as he felt the rental unit was clean. The witness stated that the rental unit was in very poor condition which is supported by the photos.

The tenant alleges that the landlord immediately began a renovation after the tenant moved out, thereby questioning the cleaning costs. The agent testified that the landlord was not intending on doing a renovation, however, could not clean the toilet to a satisfactory condition, prompting the toilet to be replaced. The agent confirmed during the hearing that only those items that could not be repaired or properly cleaned, were replaced. The landlord also replaced the carpets, however, due to their age, did not submit a claim for anything other than the general cleaning of the rental unit.

The tenant is seeking a monetary order in the amount of \$480.00 consisting of a security deposit of \$350.00, a \$30.00 key deposit and \$100.00 for the loss of earnings to file his application for dispute resolution.

Analysis

Based on the oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

Landlord's claim for general cleaning – Based on the colour photos and the testimony of the witness for the landlord and the agent, I do not accept the testimony of the tenant claiming that the rental unit was left in a clean state. The tenant did not submit any photos or provide any witnesses or witness statements to corroborate his claim that the rental unit was left in a clean state.

The tenant disputed when the photos were taken; however, **I find** that a difference of approximately one week, would not lead to the conditions as seen in the photos. **I find** the photos depict a dirty rental unit that is not in keeping with *Act*. The tenant is required under section 37 of the *Act*, to leave the rental unit reasonably cleaned and undamaged, except for reasonable wear and tear. The photos depict a dirty oven, a dirty toilet, a dirty bathtub, dirty counters, dirty shelving, a dirty stove top and other dirty

areas in the rental unit. The photos do not depict a clean rental unit in accordance with section 37 of the *Act*. Therefore, **I find** the tenant breached section 37 of the *Act*, resulting in the landlord being entitled to recover the general cleaning costs in the amount of **\$225.00**, consisting of 15 hours of cleaning at \$15.00 per hour.

Tenant's claim for a monetary order - Based on the inconsistent testimony and claims of the tenant, I do not find his evidence to be credible. The tenant stated that he paid a security deposit of \$350.00; however, the written tenancy agreement indicates that the security deposit was \$325.00. In addition, the tenant claims he paid \$30.00 for a key deposit, yet accepted a \$50.00 key deposit from the landlord when he vacated the rental unit.

The tenant has claimed for \$100.00 for loss of earnings in relation to filing for dispute resolution. An applicant can only recover damages for the direct costs of breaches of the *Act* or the tenancy agreement in claims under Section 67 of the *Act*, but "costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the *Residential Tenancy Act*. As a result, the tenant's claim is **dismissed** without leave to reapply.

I find the landlord's application contains merit and, therefore, **I find** the landlord is entitled to recover the filing fee of **\$50.00**.

I do not find the tenant's application contains merit, and therefore, **do not** grant the tenant the recovery of the filing fee.

The security deposit of \$325.00 has accrued \$1.62 in interest since September 1, 2008, resulting in a total security deposit of \$326.62, which the landlord continues to hold.

I find that the landlord has established a total monetary claim of **\$275.00** consisting of \$225.00 in general cleaning costs and the \$50.00 filing fee. **I authorize** the landlord to retain \$275.00 from the security deposit of \$326.62 in full satisfaction of the claim. **I order** the landlord to return the balance of the security deposit to the tenant in the amount of **\$51.62** within 15 days of receiving this Decision.

I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the total amount of **\$51.62**. Should the landlord fail to comply with my order described above, the monetary order may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

Conclusion

I find the landlord has established a total monetary claim of \$275.00 and may deduct that from the security deposit, and I order the return of the security deposit balance to be returned to the tenant as described above.

I grant the tenant a monetary order in the amount of \$51.62.

I dismiss the tenant's application without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 21, 2012

Residential Tenancy Branch