



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord has made an application for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The Tenant has made an application for a monetary order for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package submitted by the other party and the evidence, I am satisfied that both parties have been properly served.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, claims for both parties for recovery of litigation costs are dismissed.

The Tenant has withdrawn the claim for \$25.89 for the recovery of two usb drives used by the Tenant to provide evidence for the hearing as this applies within section 72 of the Act. The Tenants were also advised that they may make application for the recovery of original evidence (flash drives) from the Residential Tenancy Branch.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy Agreement began on July 1, 2012 on a fixed term tenancy until July 1, 2013 as shown by the submitted copy of the signed tenancy agreement. Both parties agreed that their tenancy relationship began on June 15, 2009. The current monthly rent

was \$2,719.60 as indicated on the submitted copy of the notice of a rent increase dated June 20, 2012. A security deposit of \$1,300.00 was paid on June 15, 2009. A condition inspection report for the move-in was completed by both parties on June 15, 2009. Both parties agreed that the Tenant gave notice to vacate by email on September 12, 2012 to vacate on October 15, 2012. Both also agreed to the Tenant paying rent of \$1,359.00 for the two week time period of October 1 to 15, 2012. The Tenants gave their forwarding address by email on October 9, 2012.

The Landlord seeks a monetary claim of \$5,000.00. This consists of \$1,359.00 for two weeks of unpaid rent, \$83.99 for a sears technician service call for the damaged stove, \$750.33 for the replacement of a damaged stove, \$2,576.00 for painting the interior of the entire rental, \$110.88 for carpet cleaning, \$143.64 for general cleaning and \$39.00 for dump fees. The total is \$5,062.84. The remaining portions for photos and postage fall under section 72 of the Act.

I find that the Landlord is limited to the \$5,000.00 monetary claim that was applied for in the dispute resolution.

The Tenant has made a monetary claim for \$2,225.87, while conceding that they owe to the Landlord, \$768.72 which consists of \$503.22 for prorated rent for 6 days and \$265.50 for damage to a ceran stove top. The Tenant seeks \$1,500.00 for return of double the \$750.00 security deposit and \$118.76 for the 6 month rental of a PO Box. For the remaining portions of the Tenant's claim, Section 72 of the Act applies for the time, gas, printer ink and parking.

Both parties have submitted numerous documents as evidence for these disputes. I find that the Landlord has satisfied me based upon the Tenant's direct testimony that the Tenant failed to pay rent for the two week period of October 1 to 15 by cancelling the rent cheque. However, both parties have confirmed that the Landlord locked out the Tenants on October 6, 2012 preventing them from returning for the remaining portion of the Tenancy. I find that the Landlord was premature and prevented the Tenants from having possession of the rental for the remaining time period. \$1,359.00 divided by 14 days is \$97.07 per day times 6 days is \$582.42. The Landlord has established a monetary claim for \$582.42 for the 6 days of October that the Tenant was able to have possession of the rental.

As for the Landlord's \$834.32 combined claim for the ceran top stove and service call, I find based upon the Tenant's direct testimony that the ceran top stove was damaged. As well, I find based upon the service technician's comments that efforts to mitigate the cost and buy a new stove was warranted over that of a repair job as shown by the invoice. Residential Tenancy Branch Policy Guideline #40 states that the useful life expectancy of a stove is 15 years. As neither party has submitted any evidence on the

age of the stove and that the Tenants were in occupation of the rental for approximately 3 years, I give credit to the Tenant of 4 years. On this basis, the Tenant is credited for 4/15 of the cost of \$750.33 and the remaining 11/15 to equal \$550.16. The Landlord has established a claim for \$634.15 which consists of \$550.16 for the stove replacement and \$83.99 for the service call.

In regards to the painting claim of \$2,576.00 the Tenant has not disputed the Landlord's claim but states that no opportunity was given to fix anything. I am satisfied that the Landlord has established a monetary claim, however Policy Guideline #40 also speaks to the useful life of the interior paint to be 4 years. As the Landlord has failed to provide any details on the age of when the rental was last painted, I credit to the Tenant $\frac{3}{4}$ of the \$2,576.00 and grant the Landlord \$644.00 as the Tenant has resided at the rental for approximately 3 years.

I find that as the Landlord prevented the Tenants from returning to the rental that the monetary claim portions for \$110.88 carpet cleaning and \$143.64 for general cleaning are dismissed.

I grant the Landlord's claim for \$39.00 for dump fees. The Tenant has not disputed that various garbage was left in the unit and the mattress was left outside, but was not dealt with by the Tenant.

Both parties have confirmed that the Landlord received the forwarding address in writing by email on October 9, 2012 and that the Landlord filed for dispute resolution on October 18, 2012. Although the Tenant failed to comply with Section 38 of the Act for the return of the security deposit, I find that the Landlord was able based upon the PO Box provided by the Tenant for file for dispute. Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(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;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Landlord has complied with the Act by apply for dispute resolution within the allowed timeframe. The Tenant's application for the return of double the security deposit is dismissed.

As for the Tenant's monetary claim for \$118.76 for the 6 month rental of a PO Box, I find that the Tenant has failed to provide sufficient evidence to satisfy me that this cost was as a result of the negligence of the Landlord. The Tenant has stated that the reason for this claim is that they did not want any contact with the Landlord. Providing a forwarding address in writing is a requirement in the end of tenancy process. The Tenant's claim that they "felt threatened, but not physically threatened" is contradictory. Both parties clarified that there was poor communication and many disputed allegations between the two parties. This portion of the Tenant's claim is dismissed.

The Landlord has established a total monetary claim of \$1,899.57. The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$1,300.00 security deposit in partial satisfaction of the claim and I grant to the Landlord a monetary order under section 67 for the balance due of \$649.57.

Conclusion

The Landlord is granted a monetary order for \$649.57.
The Landlord may retain the security deposit.
The Tenant's application is dismissed without leave to reapply.

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: January 18, 2013

Residential Tenancy Branch

