



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) For a return of twice the security deposit pursuant to section 38 and further compensation for her time and mailing costs for this hearing; and
- e) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

The tenant vacated the unit on March 31, 2013. Has the landlord proved on the balance of probabilities that the tenant did damage to the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation; is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice her security deposit refunded, to other compensation and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on

November 1, 2011, that rent was \$1050 a month and a security deposit of \$525 was paid.

The landlord claims \$2257 and has provided a renovator's invoice dated April 19, 2013 as evidence. The landlord broke this down approximately as \$1700 for painting and \$450 for sink and garburator repairs. There was no condition inspection report provided for move-in or move-out inspection but only some photographs showing dints, scratches and flaking paint at move-out. The parties agreed that they had done a walk through at move-out and no problems were noted so the landlord gave the tenant a cheque for the refund of her security deposit. Then the landlord stopped payment on it a few hours later for she said she noticed problems then. The landlord said she only looked at a few things and was distracted by the tenant and her friend talking at the time but noticed the wall and paint problems and the bathroom sink problem later. She said the renovator came on April 9, 2013 and he had noticed the garburator and clogging of the sink. The tenant denies having done any of this damage, except for one small chip on the bathroom wall. She said the building manager had matching paint and she would have fixed it if the landlord had agreed to allow her to come later and do it. The landlord noted the unit is about 5 years old so the paint and plumbing were about 5 years old at move-out. The parties agreed at move-in that no problems were noted except for a sticking refrigerator door which was solved. The tenant said she considered some paint chips to be normal wear and tear. In an email on April 2, 2013, the landlord notes the new tenant has moved in and in the hearing today said that the new tenant had moved in at the end of March as this tenant left.

The tenant's witnesses both said that the unit was left in good, clean condition when the tenant vacated. They noted they had helped the tenant during move-out and her relative said she had used the garburator and it was working fine; she said she has a similar unit and knows there was no problem with the working of the tenant's unit. Both said they had used the bathroom sink and found no issues with it at the time of move-out.

The tenant provided evidence that she had vacated on March 30, 2013 and provided her forwarding address in writing on April 3, 2013. The landlord filed her application for dispute resolution on May 1, 2013; she said she did not know that she had to file it within 15 days according to section 38. The tenant claims her security deposit plus \$100 for taking 4 hours off work plus \$50 for gas, posting and print costs and also requests recovery of her filing fee.

In evidence are statements from the parties, their witnesses and photographs. There is also an invoice from a contractor for painting, wall repair and plumbing repairs.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. On the landlord's claim, the onus is on the landlord to prove on the balance of probabilities that this tenant did the damage, that it was beyond reasonable wear and tear and the amount required to repair the damage.

I find the landlord had difficulty in satisfying this onus as she had provided no condition inspection report or other documentary evidence to prove the condition of the unit when the tenant moved in. The landlord alleges the tenant did the damage and the tenant denies it. I find the unit was about 5 years old at move-out and this tenant had only lived in the unit for about 16 months so there are been prior occupants. The *Residential Tenancy Policy Guideline* which is designed to account for reasonable wear and tear in rented premises assigns a useful life of 4 years for paint. I find the paint in this unit was past the end of its useful life so I find the landlord not entitled to compensation to repaint it. I find insufficient evidence on the balance of probabilities that this tenant put dints in the walls or chips in the paint, except for the one chip that she said she did. I find the landlord entitled to recover \$100 to repair the one chip. I dismiss the balance of her \$1700 claim for the reasons stated.

In respect to the plumbing repairs, I find insufficient evidence to support the landlord's allegation that this tenant caused the damage to the bathroom sink or garburator. I find the tenant's evidence more credible than the landlord's for it is supported by two witnesses who said they used these appliances when the tenant was moving out and they were in fine shape. Furthermore, the landlord said the renovator noticed the garburator problem and he was not in the unit until April 9, 2013 which is 9 days after the new tenancy began. In short, there is not sufficient evidence to prove this tenant caused the damage and I dismiss this claim of the landlord.

On the tenant's application, the onus is on her to prove on the balance of probabilities that twice the security deposit should be refunded in accordance with section 38 of the Act. I find the tenant vacated on March 31, 2013 and provided her forwarding address in writing on April 3, 2013. I find the landlord has not refunded the tenant's security deposit; she filed her application on May 1, 2013 which is well beyond the 15 day

limitation set out in section 38 of the Act. The tenant gave no permission to retain any of her deposit.

While the landlord may not have been aware of the provisions of the Act, I find they apply and the tenant is entitled to the refund of double her security deposit plus filing fees for this application. I dismiss the remainder of her claim; as stated in the hearing, we have jurisdiction to award the filing fee under section 72 of the Act but not to compensate applicants for their time in preparing for this process or for their costs of producing evidence.

Conclusion:

I find the landlord entitled to recover \$100 for a wall repair and to recover her filing fee for this application. I dismiss the remainder of her claim without leave to reapply.

I find the tenant entitled to a monetary order as calculated below and to recover filing fees for her application. I dismiss the remainder of her claim.

Calculation of Monetary Award:

Original Security deposit (no interest 2011-13)	525.00
Double security deposit	525.00
Filing fee for tenant	50.00
Less allowance for one area of wall repair to landlord	-100.00
Less filing fee to landlord	-50.00
Balance in monetary order to tenant	950.00

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: May 28, 2013

Residential Tenancy Branch