



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on February 14, 2013 for:

1. An Order for the return of double the security deposit – Section 38;
2. A Monetary Order for compensation or loss - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on February 13, 2013 for:

1. A Monetary Order for damage to the unit – Section 67;
2. An Order to retain the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fee?

Background and Evidence

The tenancy started on February 15, 2012 and ended on January 29 or 30, 2013. The Tenant provided a forwarding address on January 31, 2013. At the onset of the tenancy the Landlord collected \$625.00 for a security deposit and pursuant to a previous decision was awarded the filing fee due to damages to the unit and a reduction of the security deposit by \$50.00. The remaining security deposit is \$575.00. The Parties mutually conducted a move-out inspection and a copy of the inspection report was provided to the Tenant. At move-out the Tenant states that the Landlord was given permission to conduct the move-out inspection without the Tenant present.

The Tenant claims return of double the security deposit in the amount of \$1,250.00.

The Landlord provided several photos of the unit and states that the Tenant failed to clean the unit and claims \$190.40 for all cleaning of the unit. The Tenant states that the unit was fully cleaned except for the fridge. The Tenant notes that the Landlord has not provided photos of the stove which was cleaned by the Tenant. The Landlord states that the stove was not cleaned and points to the cleaning invoice that this cleaning was done.

The Landlord states that the Tenant left the unit damaged, provided an invoice from the person who made the repairs, and claims as follows:

- \$520.00 for the cost of painting the living room, dining room and kitchen wall. The Landlord states that the walls had holes, filled areas and marks and has been painted freshly for the start of the tenancy. The Landlord provided an invoice for the pre-tenancy painting of the unit. The Tenant states that the holes were patched by the Tenant and agrees that no paint was used to cover the wall areas patched. The Tenant states that the walls in the bathroom and kitchen had not been painted at move-in;
- \$30.00 for the cost of repairing a bedroom closet bi-fold door and repairing a hole that has been patched on the bedroom door. The Landlord states that the

photos failed to show the damage on the bottom of the doors. The Tenant states that the bi-fold door was damaged due to catching on the carpet;

- \$55.00 for making repairs to the bathroom, cleaning the bathroom window and caulking the tub. The Tenant denies damaging the window and tub and states that the Landlord had made an inspection of the bathroom during the tenancy and that nothing was noted at that time. The Tenant denies causing the caulking to be damaged. The Landlord states that prior to the inspection the Tenant had covered the bathroom wall and that this was removed as a result of the inspection but put back again by the Tenant. The Landlord states that the Tenant's actions kept moisture in the unit causing the caulking and window to be damaged;
- \$90.00 for painting and repair materials;
- \$35.00 to repair a water control valve. The Landlord does not know how this was damaged but states that it was fine at the beginning of the tenancy. The Tenant states that this valve was never touched by the Tenant, that damage to this valve was not known to the Tenant and that the Landlord was the last person to have touched this valve when there were problems with the water pressure in the unit; and
- \$10.00 to take garbage to the dump. The Landlord states that items were left in the yard by the Tenant and that the repair person cleaned up all items that were left in the yard. The Tenant states that none of the items shown in the yard were his, but belonged to the landlord and the neighbour.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord made an application to claim against the security deposit within 15 days of

receipt of the Tenant's forwarding address, I find that the Tenant has not substantiated an entitlement to double the security deposit and I dismiss this claim.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given that none of the Landlord's photos show an unclean unit other than the fridge, I accept the Tenant's evidence that the unit was otherwise cleaned. Given the agreement on the unclean fridge, I find that the Landlord has substantiated a nominal entitlement of **\$25.00** for the fridge cleaning.

Given the Landlord's evidence and photos of the wall, I find that the Landlord has substantiated an entitlement to the cost of painting the walls. However given the undisputed evidence that the Tenant made some repairs to the walls and noting that the photos do not show remaining damage to the extent claimed, I reduce the entitlement by 50%, which I consider reflects the contribution of the Tenant to the repair to the walls. As the Landlord claimed \$520.00 and \$90.00 for the painting and supplies, I calculate the Landlord's entitlement from the combined amount to be **\$305.00**. I take the above entitlement for painting the unit to include the painting of the bedroom door.

Given the evidence of the Tenant that the bi-fold caught on the carpet and noting that the photos do not show any damage, I dismiss the claim in relation to the bi-fold door. Although the Landlord claims that the Tenant caused damages to the bathroom window and tub by covering the bathroom window, given that an inspection of the unit was done in relation to this covering and no damages were noted by the Landlord at that time and considering that the caulking around the tub appears dated, I find that the Landlord has failed to substantiate that the Tenant caused the damages claimed and I dismiss this claim. As the Tenant denied causing any problem with the bathroom valve and noting the general aged appearance of the bathroom facility shown in the photos, I find that the

Landlord has not substantiated that the Tenant caused the valve to be damaged and I dismiss this claim. While I accept that items were taken by the repair person to the dump, given the evidence of the Tenant that these items were not his, I find that the Landlord has failed on a balance of probabilities to establish that the Tenant caused the cost claimed and I dismiss this claim.

Noting that in the previous decision the Landlord was provided recovery of the filing fee in relation to damages currently claimed and as the Landlord's success with this application has been limited, I decline to award recovery of the filing fee. I order the Landlord to deduct the entitlement of **\$330.00** from the security deposit of **\$575.00** plus zero interest and to return the remaining amount of **\$245.00** to the Tenant.

Conclusion

I Order the Landlord to retain the amount of \$530.00 from the security deposit plus interest in the amount of \$575.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$245.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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: May 07, 2013

Residential Tenancy Branch

