



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that on January 4, 2013, the tenant handed the landlord (or one of his co-workers) the tenant's written notice to end this tenancy by January 31, 2013. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on February 12, 2013. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

At the commencement of the hearing, the tenant confirmed that he had received a copy of the landlord's written and photographic evidence package well in advance of this hearing. During the hearing, the tenant testified that he had not received documents that the landlord provided to the Residential Tenancy Branch (the RTB) and the landlord claimed to have included in the evidence package to the tenant. One of these documents, a copy of the tenant's written notice to end this tenancy, was not contentious as the tenant admitted to having provided written notice to end his tenancy to the landlord. The other important document that the tenant testified was missing from his evidence package was a "Move Out Release" allegedly signed by the tenant on February 3, 2013, which was initialled by both parties as taking effect on February 5, 2013. This document stated that the landlord could dispose of all items left behind inside the buildings and outside in the yard of the rental premises. The tenant testified

that he did not recall signing this document. Although I could have adjourned this hearing to ensure that the tenant had a copy of this document, I have proceeded without giving regard to the Move Out Release, as there was no need to consider this evidence in making a decision regarding the landlord's application for the recovery of losses incurred in cleaning up the outside of this rental property.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced in or about April 1, 2006 on the basis of a one-year fixed term tenancy. The non-profit society employing the landlord purchased the property in November 2008. Monthly rent for what was a periodic tenancy by the time the tenant vacated the premises on February 4, 2013, was set at \$1,300.00, payable in advance on the first of each month. The landlord continues to hold the \$678.49 security deposit for this tenancy.

The landlord applied for a monetary award of \$678.49, the amount of the security deposit, plus recovery of the landlord's \$50.00 filing fee for this application. The landlord provided the following Details of the Dispute in the application for dispute resolution.

...Tenant left the place in a mess, and didn't remove all his belongings. Also he left a pile of chipping, branches and logs all over the yard. See photos attached.

The tenant testified that the previous owner of the property conducted a joint move-in condition inspection when he first occupied the rental property and provided the tenant with a copy of a condition inspection report, although the tenant entered no written evidence for this hearing. The landlord testified that he did not conduct nor request a joint move-out condition inspection for this tenancy.

During the hearing, the landlord confirmed the tenant's claim that someone entered the rental premises after the tenant vacated the home on February 4, 2013 and wrote graffiti on the inside of the rental home. The landlord confirmed that this happened after the tenant gave him the keys on February 4, 2013 and before the landlord took the photographs of the rental home the following day which were entered into evidence for this hearing. The landlord testified that he had not claimed for damage inside the rental

home, nor had he claimed for unpaid rent for any portion of February 2013, even though the tenant remained in the rental unit for a portion of that month.

The tenant confirmed that the landlord's written evidence provided to him included a copy of the landlord's invoice totalling \$1,166.30 for damage to this rental property arising out of this tenancy. He also confirmed receiving a copy of bin rental invoice of \$408.80, included in the \$1,166.30 figure noted in the landlord's invoice. The landlord testified that he was only seeking the recovery of the expenses incurred in cleaning up the exterior of the property, despite some clean-up costs incurred on the inside for which the tenant was responsible. In addition to the \$408.80 invoice for bin rental, the exterior costs were itemized as \$90.00 in dump charges and \$432.00 for the labour charge for cleaning up the yard of this rental home.

The tenant testified that the landlord told him not to worry about cleaning up the interior of the house as the landlord's society was planning to demolish the house after the tenancy ended. The tenant testified that he did dump wood chips in the yard from felling a tree or trimming a tree on the property and had planned to dispose of these chips and clean up the yard before he vacated the premises. He testified that he was unable to dispose of this material and admitted that he did not clean up the mess he had created in the yard of this rental property. He confirmed that the landlord's photographs accurately reflected the state of the yard at the end of this tenancy and that he was responsible for the conditions noted in the landlord's photographs.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in and move-out condition inspections and inspection reports are very helpful. Although it would have been beneficial had the landlord conducted a joint move-out condition inspection at the end of this tenancy and submitted a condition

inspection report, section 37(2) of the *Act* requires a tenant to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

The status of the interior of the rental unit at the end of this tenancy is somewhat unclear. The landlord gave sworn testimony that someone entered the locked rental unit after he took possession of the premises and before he took photographs and caused some damage to the rental unit. However, there is no dispute that the tenant was responsible for failing to remove the wood chips from tree trimming and removal of debris and other materials he left on the outside of the rental property. The landlord provided undisputed photographic and written evidence with respect to the extent of the material that required clearing and disposal at the end of this tenancy.

On a balance of probabilities, I find that the landlord has submitted sufficient evidence to demonstrate that the tenant did not leave the outside of the rental property reasonably clean and undamaged except for reasonable wear and tear. As such, I find that the landlord has demonstrated eligibility for a monetary award for damage in the amount of \$90.00 for dumping charges, \$408.80 for bin rental and \$432.00 for labour for the cleanup of the yard of this rental property.

I allow the landlord to retain the tenant’s security deposit plus applicable interest to partially satisfy the monetary award issued in this decision. As the landlord has been successful in this application, I also allow the landlord to recover the \$50.00 filing fee for this application from the tenant.

Conclusion

I issue a monetary Order in the landlord’s favour under the following terms, which allows the landlord to recover damage incurred during this tenancy and the filing fee, and to retain the tenant’s security deposit:

Item	Amount
Dumping Charges	\$90.00
Bin Rental for Yard Cleanup	408.80
Labour for Cleanup of Yard	432.00
Less Security Deposit (\$678.49 + \$23.17 = \$701.66)	-701.66
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$279.14

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these

Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 03, 2013

Residential Tenancy Branch

