



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kenson Realty
and [tenant name suppressed to protect privacy]

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 testified that his company sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on April 16, 2013. The tenant confirmed that he received a copy of the landlord's hearing package by registered mail as stated by the landlord. I am satisfied that the landlord served the hearing package to the tenant in accordance with the *Act*.

Although I did not have a copy of the landlord's written evidence package before me at the time of this hearing, I was subsequently able to locate and review a copy of that package sent to the Residential Tenancy Branch on July 4, 2013. The tenant gave undisputed sworn testimony that the only written evidence that he received from the landlord was by way of a series of emails, which apparently contained attachments that he could neither access nor review. He said that he was unable to access any of the receipts apparently provided in the landlord's emails and was uncertain if he had been able to access the evidence the landlord wanted considered in this application. The landlord confirmed that the only method of service of the landlord's written evidence to the tenant was by email.

At the hearing, I noted that service of written evidence by emails is not one of the ways that parties are allowed to serve evidence to one another under the *Act* (section 88 of

the Act). As the tenant testified that he was unable to access attachments included in the emails sent to him by the landlord and I am not satisfied that the landlord served the written evidence to the tenant in accordance with section 88 of the Act, I advised the parties that I would be disregarding the landlord's written evidence, other than the limited information contained in the landlord's application for dispute resolution and some basic information the tenant confirmed having received. The tenant did not submit any written evidence.

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 one-year fixed term tenancy commenced on April 1, 2012. Monthly rent was set at \$950.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$475.00 security deposit paid on March 3, 2012.

After some discussion, the parties agreed that this tenancy ended on March 30, 2013, as per the terms of the fixed term tenancy agreement. The parties also agreed that a joint move-in condition inspection occurred on April 1, 2012, and the landlord provided the tenant with a copy of the move-in condition inspection report. No copy of this report was entered into written evidence by either party. The parties also agreed that one of the landlord's representatives and the tenant conducted a joint move-out condition inspection on March 30, 2013. Although the landlord said that he believed a joint move-out condition inspection report was prepared and conveyed to the tenant, the tenant denied having received one. The landlord did enter a copy of the move-out condition inspection report into written evidence for this hearing.

The landlord's application for a monetary award of \$475.00 was described in the following terms in the Details of the Dispute section of the landlord's application for dispute resolution.

Tenant's tenancy agreement is due on March 31st 2013 and he has moved out accordingly. However the unit needs more detail cleaning, torn curtain, defected dryer knob, some damage on ceiling so we need to hold back the damage deposit to cover the repairing cost.

At the hearing, the landlord referred to some receipts for repairs and cleaning that resulted from this tenancy. The tenant testified that he left the rental unit in good

condition and was surprised that the landlord tried to retain any portion of his security deposit based on the condition inspection conducted with one of the landlord's representatives, S. Both parties confirmed that there were disagreements that arose during the course of this tenancy.

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.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the security deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, the parties agreed that the tenant handed the landlord his forwarding address in writing on March 30, 2013, the same date he ended this tenancy. The landlord applied for dispute resolution to retain the tenant's security deposit within 15 days of March 30, 2013,

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. While both parties confirmed that joint move-in and move-out condition inspections occurred, the landlord did not enter into written evidence a copy of reports of these inspections. The landlord did not have a copy of the joint move-out condition inspection report available to him at this hearing and the tenant denied that any such report was ever provided to him.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 36(1) of the *Act* reads in part as follows:

36 (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

I am not satisfied that the landlord has demonstrated that the requirements of the *Act* regarding the joint move-out condition inspection report has been met. Therefore, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is limited. However, I also find that the tenant did not comply with section 37(2) of the *Act* which requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended.

Based on the sworn testimony of the parties, I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean and undamaged" as some cleaning and repair was likely required by the landlord after the tenant vacated the rental unit. For that reason, I find that the landlord is entitled to a limited monetary award of \$75.00 for general cleaning and repairs that was required at the end of this tenancy.

As the landlord has had limited success in this application, I allow the landlord to recover \$25.00 from the filing fee from the tenant.

In total, I allow the landlord to retain \$100.00 from the tenant's security deposit and to return the remainder of the tenant's security deposit with applicable interest forthwith. No interest is payable over this period.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$375.00. This amount is calculated by subtracting the \$75.00 monetary award for cleaning and damage and the recovery of \$25.00 from the landlord's filing fee from the tenant's original \$475.00 security deposit.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: July 10, 2013

Residential Tenancy Branch

