



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNDC, MNSD, SS, FF
Tenant: MNSD, FF, O

Introduction

This hearing dealt with cross Application for Dispute Resolution with both parties seeking a monetary order. The hearing was conducted via teleconference and was attended by the landlord and the tenant.

In her Application the landlord sought an order to be allowed to serve the tenant with evidence or documents in a manner that is different than allowed for under the *Residential Tenancy Act (Act)*. At the outset of the hearing the landlord clarified that she served the tenant by mail. Sections 88 and 89 prescribe acceptable methods of service and they include mail. As such, the landlord has served documents and evidence in accordance with the *Act*. I amend the landlord's Application to exclude the service matter.

The landlord also clarified that she was reducing the value of her claim from \$450.00 to \$315.00 plus the filing fee. While I accepted the landlord's amendment during the hearing the actual amounts were slightly higher than noted at the start of the hearing and I have allowed the claims to proceed at their actual value.

Both parties provided digital evidence that included copies of emails, photographs, and in the case of the tenant one video. Residential Tenancy Branch Rule of Procedure #11.8 states that "Digital evidence includes photographs, audio recordings, video recordings or other material provided in an electronic form that cannot be readily reproduced on paper".

As both emails and photographs can be readily reproduced on paper I have not considered any emails or photographs that came only on digital devices. I have allowed the video submitted by the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage/cleaning of the rental unit; for all or part of the security and pet damage

deposits and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to a monetary order for double the amount of the pet damage deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties provided a copy of a tenancy agreement signed by the parties on July 7, 2011 for a 1 year fixed term tenancy beginning on August 1, 2011 that converted to a month to month tenancy on August 1, 2012 for a monthly rent of \$1,350.00 due on the 1st of each month with a security deposit of \$675.00 and a pet damage deposit of \$675.00 paid.

The parties agree the tenancy ended and the landlord's agent and the tenant's agent attended a move out condition inspection on June 30, 2013. The tenant provided the landlord with her forwarding address via email on July 1, 2013.

The landlord submits that the tenant failed to clean the rental unit adequately and that as a result of this she had to hire cleaners at a cost of \$179.20 (receipt provided). The landlord described that there were stains on the counters; the fridge and stove were not cleaned; the bathroom and cupboards required cleaning as well as the floor.

The tenant did agree that she probably could have cleaned better and did not dispute the landlord's claim for this portion for cleaning. However, the tenant noted that the cleanliness of the rental unit is not related to any issues with her pet. The tenant also pointed out that the landlord's agent sought to claim \$500.00 from the security deposit and not from the pet damage deposit on the Condition Inspection Report.

The landlord also claims \$155.40 for the repair of a bracket on a kitchen cabinet that broke in the last month of the tenancy. The parties agree the tenant contacted the landlord's agent at the time it broke and she was advised that she must repair the arm herself prior to the end of the tenancy.

The tenancy submits that the bracket broke solely as a result of wear and tear and that she had done nothing to cause the damage. She states that the cabinet in question is the one that she used the most during her tenancy and the bracket itself was made of a cheap product and she should not be held responsible for the repair.

The landlord testified that she retained both deposits because at the time she filed her Application she was unaware of the costs for cleaning and repairs. She also indicates that she was advised by her agent (a licensed property manager) and the Residential Tenancy Branch that she could retain both deposits until this hearing.

I note the tenant's agent noted \$500.00 as the possible costs for cleaning and repairs in the Condition Inspection Report and the landlord originally applied for \$450.00 in compensation for damage and cleaning of the rental unit.

The tenant submits that because the landlord's claim is not related to any damage caused by her pet the landlord should have returned the pet damage deposit regardless of this hearing.

Analysis

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Based on the testimony of both parties I find the tenant failed to clean the rental unit sufficiently to comply with Section 37 and the landlord is entitled to compensation for the cleanup. Based on the testimony of both parties I find there is no evidence to suggest that the cleaning required resulted from the tenant's pet.

I also find that the parties agree the bracket in the cupboard was damaged, however, I find there is no evidence before me that the damage was caused by wear and tear. As such, I find that it is unlikely that a relatively new kitchen cabinet bracket would break under normal usage. I find the landlord is entitled to compensation for this repair in the amount claimed.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit and pet damage deposit or file an Application for Dispute Resolution to claim against the security deposit or pet damage deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the tenancy ended on June 30, 2013 and the landlord received the tenant's forwarding address via email on July 1, 2013, which the landlord used to file her Application for Dispute Resolution on July 3, 2013, I find the landlord had 15 days from the July 1, 2013 to file her Application to claim against both deposits.

Despite the landlord's explanation that she was unaware of the total amount of what her claim would be, I find that her property manager thought it would be \$500.00 or less prior to the landlord submitting her Application and clearly the landlord thought it would be less than or equal to \$450.00 when she filed her Application.

I also find that based on the evidence and testimony of both parties the landlord had not considered, prior to the hearing, that any of the cleaning required or the damage to the kitchen cabinet was caused by the tenant's pet.

While I accept that the landlord may have been advised that she could keep the deposits, it is not clear what she specifically told the Information Officer from the Residential Tenancy Branch to obtain that decision. For example, based on the landlord's testimony I am not satisfied the landlord informed the Information Officer that her claim would be less in value than the security deposit alone or that she had any indication that the damage or cleaning was required because of the tenant's pet.

For these reason, I find the landlord did not have authourity to retain the pet damage deposit and she should have returned it to the tenant within 15 days of receipt of the forwarding address or by July 16, 2013. As the landlord failed to return the pet damage deposit in this time period, I find the tenant is entitled to return of double the pet damage deposit.

I dismiss the landlord's claim to recover mailing costs and other costs associated with her pursuit of her claim, as a cost of doing business.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,690.40** comprised of \$1,350.00 double the pet damage deposit; \$675.00 security deposit; less \$155.40 to repair the kitchen cabinet and \$179.20 for cleaning.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties were successful in their Applications and therefore entitled to recover their filing fee from the other party, I find granting each as such would have no effect and I therefore dismiss each others claim to recover the filing.

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: October 07, 2013

Residential Tenancy Branch

