



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF, O

Introduction

This hearing dealt with two related applications. File T is the tenant's application for return of double the security deposit. File L is the landlords' application for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same for both applications one decision will be rendered for both.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order and, if so, in what amount?
- Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

The landlord was represented at the hearing by its manager, who started his job on February 1, 2013. The witness did not appear to have any records to refer to and was only able to testify about events that have occurred since he took over as manager.

According to the tenant this month-to-month tenancy commenced about twelve years ago. He paid a security deposit of \$200.00 but he does not have any record of when. By the end of his tenancy the monthly rent, which was due on the first day of the month, was \$415.00. A move-in inspection was not conducted at the start of the tenancy.

In mid-April the tenant was served with a 1 Month Notice to End Tenancy for Cause with an effective date of May 31, 2013. The tenant did not dispute the notice nor did he pay any rent for May. On May 19, 30 days after the tenant says he received the notice, the tenant moved out of the rental unit. He did not give the landlord any notice that he was moving nor did he leave a forwarding address or other contact information for the landlord.

The landlord was notified by one of the tenant's neighbours that the tenant had moved out. He found the door of the rental unit unlocked and the keys left on the table.

The tenant acknowledges that he left a sofa behind. The landlord claims \$85.00 to haul the sofa and a few other items to the dump. He says he paid someone with a truck \$75.00 cash to load and haul away the items plus a \$10.00 fee at the land fill. There was no receipt for the truck and driver but the landlord did file a receipt for the dump fee. The landlord thought this would have taken 1.5 or 2.0 hours to do.

The tenancy agreement allowed the tenant to smoke in the unit, which he did. The tenant acknowledged that the smoke did cause some damage. All the surfaces of the rental unit were coated with nicotine, grease and dirt. The tenant said he could not wash the walls because of his physical condition. The landlord testified that he hired two people to clean the unit before it was painted. They worked for three days. They charged him \$650.00 cash for cleaning. No receipt for the payment was given to the landlord. In addition, the landlord claimed \$100.00 for cleaning supplies. A receipt for the cleaning supplies was filed in support of this claim.

The landlord replaced all the venetian blinds, seven in total. The landlord said that two of the blinds were new. He did not know how old the other blinds were. The landlord said it was quicker and easier to install new blinds than to try to clean the existing blinds.

The tenant said the four bedroom blinds were never replaced during the tenancy. He said that the other blinds had been replaced but he did not say when. According to the invoices filed by the landlord the blinds costs \$13.97 or \$9.97 plus tax. The landlord also claimed \$120.00 (4 hours @ \$30.00/hour) for installation.

The landlord claimed \$19.97 plus tax to replace a shower curtain. There was no information as to the age or condition of the shower curtain.

The landlord claimed \$15.00 to replace the broken toilet seat and \$20.00 labour to install it. The tenant said he had bought the seat about a year ago to replace the original one. He admitted cracking it during the tenancy.

The tenant filed his application for dispute resolution. He testified that he did not give the landlord any contact information until he served the landlord with his application for dispute resolution sometime after September 20. The landlord filed its application for dispute resolution on September 26.

Analysis

Is the landlord entitled to a monetary order and, if so, in what amount?

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

Having looked at the photographs filed by the landlord I find that the unit, while old, was very dirty. Cleaning the nicotine, grease and dirt would have been a big and time consuming job. The usual rate claimed and allowed on applications of this nature is \$20.00 to \$25.00 per hour. This represents two people working for 16.25 to 13 hours. I find that the amount claimed by the landlord reasonable and I allow it in full. I also allow the landlord's claim of \$100.00 for cleaning supplies.

The expected useful life of venetian blinds in a rental unit is ten years. The landlord testified that two of the blinds were new. I allow the landlord \$55.00 for blind replacement. Nothing is allowed for the other seven blinds as the only evidence is that they were more than ten years old.

I allow the landlord's claim of \$35.00 for the toilet seat replacement. There was no evidence of the age or condition of the shower curtain so that claim is not allowed.

In total, I allow the landlord \$900.00 for cleaning and repairs.

The tenant is responsible for the May rent in the amount of \$415.00.

The landlord also claimed the cost of registered mail and photographs. The *Residential Tenancy Act* does not allow an arbitrator to award any party the costs of preparing or serving their application for dispute resolution or evidence. This part of the claim is dismissed.

Is the tenant entitled to a monetary order and, if so, in what amount?

In a submission filed on behalf of the tenant by an unnamed person it was argued that because a move-in condition inspection was not conducted as required by section 23, section 24(2) should be applied. However, as explained by *Residential Tenancy Policy Guideline 35: Transition – Security Deposits*, the legislation provides that the requirement for a start of tenancy condition inspection does not apply to a tenancy that started before January 1, 2004.

The same submission argued that since a move-out inspection was not conducted section 36(2) should be applied. Section 36(2) only applies if a tenant has not abandoned the rental unit. In this case, the tenant left the rental unit without giving the landlord any notice that he was going to do so and without giving the landlord any contact information until four months later. I find that the tenant abandoned the unit within the meaning of section 36(2).

The tenant's evidence is that he did not give the landlord his new address until sometime after September 20. The landlord filed its' application for dispute resolution within fifteen days of then so section 38(6) does not apply and the landlord is not required to pay the tenant double the amount of the security deposit. The tenant's claim is dismissed.

Calculation of Interest

Neither party was able to say when this tenancy began nor when the security deposit was paid. For the purposes of calculation the interest to be paid on the security deposit I am going to assume that the tenancy started June 1, 2001; twelve years from the end of the tenancy. The interest accrued on a security deposit of \$200.00 at the prescribed rate since that date is \$10.73.

Conclusion

I find that the landlord has established a total monetary claim of \$1365.00 comprised of arrears of rent for May of \$415.00, cleaning and repairs of \$900.00, and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit and interest of \$210.73 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1154.27.

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: November 19, 2013