



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The tenant filed on August 19, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security / pet deposit (\$525) - Section 38
2. An Order to recover the filing fee for this application (\$50) - Section 72.

The landlord application was received on September 06, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows, as amended in the hearing by the landlord:

1. A monetary Order for damages (\$525.00) – Section 67
2. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given a full opportunity to settle their dispute, present relevant evidence and make relevant prior submissions of evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenant did not advance any document evidence and acknowledges receiving the bulk of evidence from the landlord, except for one letter dated August 12, 2013. The landlord acknowledges they did not provide the letter dated August 12, 2013 to the tenant. As a result, that letter is not admissible as evidence in this matter.

Preliminary matters

The tenant acknowledges receiving a cheque from the landlord several months ago in

the amount of \$225.00 dated 2013-08-15 – cheque #025, which the tenant has not cashed and may be stale-dated. The parties have agreed the tenant will immediately mail back to the landlord, in the absence of which the landlord will cancel, and with the effect that the landlord still retains all deposits in trust.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began in about June 2010. The landlord acquired the rental unit in June 2010 at which time the tenant's deposits and all rights and responsibilities of the landlord were transferred. At the outset of the tenancy the landlord received a security deposit in the amount of \$425.00 and a pet damage deposit of \$100.00 – which effectively the applicant landlord retains in trust. The tenant vacated July 31, 2013. During the tenancy the payable rent was \$850.00 per month. At the beginning of the tenancy the tenant testified they did not conduct a move in inspection with the landlord of the day, and at the end of the tenancy it is agreed that the parties did not conduct a move out inspection in accordance with the Act.

The tenant claims that when they vacated the rental unit they left it at least reasonably clean and undamaged by them, with the result that the unit was returned to the landlord sufficiently clean and with reasonable wear and tear.

The landlord claims the tenant left the majority of the rental unit reasonably clean however damaged by them. The landlord provided a list of deficiencies with the rental unit which they attribute solely to the conduct of the tenant during the tenancy. The landlord also claims the cost of an electrician and dumping costs.

The landlord claims the following costs in damages.

Key for door lock	\$ 15.68
Kitchen light and chandelier shades	\$ 17.82
Repair several holes in walls	\$ 61.92
Repair bathroom fixture	\$ 21.96
Clean bathtub, top of cupboard, under fridge & stove	\$220.00

Replace refrigerator handle	\$ 50.00
Dumping fees for exercise bike and water bed	\$ 25.25

The landlord provided an invoice from an electrical contractor, a receipt for dumping fees and 7 receipts from *home improvement stores*.

The tenant testified to the following. They did not receive a key for the front door – which also has an electronic bolt unit. The claimed kitchen light shades were missing at the outset of the tenancy. The claimed holes were present in the unit at the outset of the tenancy. The claimed bathroom fixture was compromised at the outset of the tenancy. They cleaned the bathtub to best of their ability other than a persistent mineral staining, wiped the top of cupboard, and did not clean under the fridge or stove - the tenant claims the fridge was not with wheels, while the landlord claims the fridge has wheels. The fridge handle was compromised at the outset of the tenancy so the tenant removed it, setting it aside. They did not own an exercise bike or a water bed, but that other units were being vacated at the same time as the tenant.

Analysis

On the preponderance of the evidence submitted and the testimony of the parties, I find as follows:

If a claim is made by the landlord for damages to property, the normal measure of damage is the cost of repairs or replacement (less depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable, and the landlord is required to mitigate their costs accordingly. It must further be emphasized that it is the onus of the landlord who must provide sufficient evidence that the costs for which they claim compensation are for conditions beyond reasonable wear and tear, and are the result of solely the conduct or neglect of the tenant.

Section 37 of the Act, in relevant part, states as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

On balance of probabilities, I accept the testimony of both parties that the rental unit was left – for the most part - reasonably clean. As the tenant occupied the rental unit for a longer period than the landlord has known the rental unit, I prefer the tenant's testimony that the fridge was not on wheels, and therefore the tenant was not responsible to clean under it.

Section 7 of the Act states as follows.

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the *Act*, the party claiming damage – the landlord - bears the burden of proof. Moreover, the landlord must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the act:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

The landlord relies on their determination that the tenant caused the purported damage. The tenant relies on their argument that they did not cause the damage.

The landlord bears the burden of proof. The landlord has not provided sufficient evidence to support their claim that the tenant in this matter caused damage to the light fixtures, walls, electrical system, or bathroom fixture. The landlord has not provided sufficient evidence to support their claim that the tenant in this matter was ever given a key to the front door or is responsible for dumping fees for an exercise bike and water

bed. I find that while I may accept the testimony of both parties in respect to the fridge handle, the landlord has not provided a receipt for replacement of this item as verification of the actual amount required to compensate for the claimed loss, and as a result does not meet the above test for damages or loss.

I find the landlord has not met the test for damages or loss, and as a result, **I dismiss** the landlord's claim in its entirety, without leave to reapply.

In this application the landlord requested the retention of the tenant's deposits in satisfaction of their monetary claim. Because the landlord's claim has been dismissed in its entirety without leave to reapply it is appropriate that I Order the return of the tenant's deposits.

As the tenant's claim is allowed, they are further entitled to recover their filing fee of \$50.00, for a total award of **\$575.00**.

Conclusion

The landlord's claim **is dismissed**, without leave to reapply.

The tenant's claim **is allowed**.

I grant the **tenant** an Order under Section 67 of the Act for the amount of **\$575.00**. *If necessary*, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 27, 2013

Residential Tenancy Branch

