



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with (a) an application by the tenant for a monetary order; and (b) an application by the landlord for a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. Both parties requested recovery of the filing fee from each other. Both parties attended the hearing and had an opportunity to be heard.

Issues(s) to be Decided

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on July 18, 2012. The rent was \$1825 per month and the tenant paid a security deposit of \$912.50 at the start of the tenancy. The original term of the tenancy was supposed to be for one year ending on August 31, 2013 but the tenant ended up vacating on July 26, 2013. The tenant knew he was liable for the rent until the end of August and so did in fact pay the rent for August with the understanding that the landlord would refund a portion of the August rent if the landlord was able to get new tenants into the unit earlier than the end of August. The landlord did find new tenants and they moved into the unit on August 18, 2013. When they moved in the landlord refunded the tenant the sum of \$638.50 in accordance with the agreement the parties had made in this regard.

In terms of condition inspection reports there is some confusion. The landlord submitted 2 pages of a 4 page move-in report and the tenant claims he never saw this document. Both parties agree there was no move-out report completed. Both parties submitted photos of the unit after the end of the tenancy. The tenant's photos show a unit that looks clean and tidy. The landlord submitted photos of a pile of miscellaneous

boxes and belongings, a venetian blind on the floor , a wall with several holes in it and several photos of the stove. The landlord claims that the tenant left the storage area littered with things that had to be taken to the dump and that the tenant damaged the glass stove top. The tenant denied leaving any rubbish in the unit or storage locker and claimed that the chip in the stove top was pre-existing.

As for the security deposit, the tenant gave the landlord his forwarding address in writing on July 26, 2013, the day he moved out. The tenant has not yet received any of his deposit back. The landlord does not dispute these facts.

The tenant filed his Application for Dispute Resolution on September 29, 2013. The landlord filed his Application for Dispute Resolution on October 22, 2013.

Analysis

Tenant's Claim

The tenant has made a monetary claim comprised of the following:

Double Security Deposit (2 x \$912.50)	\$1825.00
Refund for August rent	\$126.52
Filing fee	\$50
TOTAL	\$2001.52

I shall deal with each of these claims in turn.

Double Security Deposit (\$1825) - Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the entire security deposit to the tenant or file an application for dispute resolution claiming against the deposit. Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord may not make a claim against the deposit and must pay the tenant double the amount of the security deposit.

In the present case, the landlord did not comply with Section 38(1) and therefore became liable to pay to the tenant double the amount of the original security deposit under Section 38(6). The tenant has therefore established his monetary claim for \$1825.

Refund for August rent (\$126.52) – The tenant has claimed a refund of rent for the last 13 days of August based on the fact that the landlord re-rented the unit on August 18th. The tenant calculated that the landlord owed him \$765.32 based on a rent of \$1825 per month which is equal to a per diem of \$58.87. The landlord has already returned to the tenant the sum of \$638.80 which leaves a balance owing of \$126.52. However, the landlord claims that the new tenants are not paying the same as the tenant was paying and that he returned an amount which accords with the new rent being paid.

Because I do not have any information before me as to what the new rent is, I am satisfied that the amount already returned to the tenant is appropriate. I therefore dismiss this portion of the tenant's claim.

Filing fee (\$50) – Based on the fact that the tenant's claim has in large measure been successful, I am satisfied that the tenant should recover his filing fee from the landlord.

Landlord's Claim

The landlord has made a monetary claim against the tenant comprised of the following:

Replacement of Oven Glass	\$697.25
Garbage removal from storage	\$157.50
Cleaning	\$150.00
Filing fee	\$50.00
TOTAL	\$1054.75

I shall deal with each of these claims in turn.

Replacement of Oven Glass (\$697.25) – This claim is the largest of the claims being made by the landlord. The landlord claims that the tenant somehow chipped the glass on the top of the stove and that it had to be replaced for safety purposes. The landlord submitted a receipt from Sears Home Services showing the cost of replacing the chipped cooktop. The date of the receipt is August 27, 2013. The landlord testified that he did not claim this expense against the tenant earlier (within 15 days of him leaving) because he had not yet had the work done.

For his part, the tenant claims that this damage was pre-existing and that he is not responsible for this damage. Further, the tenant points out that there were no completed inspection reports. The tenant also noted that there were marks on the walls when he moved into the unit.

Given the fact that the party making the claim bears the burden of proof, I am not satisfied that the landlord has provided sufficient evidence in support of this claim. It is true that the landlord has provided a receipt and a portion of a move-in report but these are not, in my opinion, adequate to place the responsibility for this damage on the tenant. As a result, I dismiss this portion of the landlord's claim.

Garbage removal (\$157.50) – The photos submitted by the landlord in support of this claim show various items including a car seat for an infant and a child's scooter. The tenant pointed out that he does not have a young child and that none of these items are his. Again, the party making the claim bears the burden of proof and in the absence of any corroboration other than these photos it is impossible for me to say that this rubbish came from the tenant's storage locker. As a result, I dismiss this portion of the landlord's claim.

Cleaning (\$150) – The landlord claims that the unit was not left reasonably clean by the tenant as required by Section 37 of the Act. In support of this claim the landlord provided four photos of the oven and a photo of a wall with some nail holes in it. The tenant disputes this claim and submitted photos showing the overall condition of the unit when he left. While it appears to me that the stove did require more cleaning, I am unable to find that the rest of the unit was not clean. The photos submitted by the tenant are compelling and the photos submitted by the landlord are inadequate. As a result, I find that the landlord has established a monetary claim of \$35.00 for the cleaning of the stove but I am dismissing the balance of this claim.

Filing fee (\$50) – Based on the outcome of the landlord's claim I dismiss his request to recover the filing fee from the tenant.

Conclusion

I have found that the tenant is entitled to a payment from the landlord in the amount of \$1875.00 and that the landlord is entitled to a payment from the tenant in the amount of \$35.00. When set off against each other, the amount owing to the tenant is \$1840.00.

I therefore order that the landlord pay to the tenant the sum of \$1840.00. This order may be filed in Small Claims Court and enforced as an order 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: December 09, 2013

Residential Tenancy Branch

