



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant filed for a monetary order for return of double the security deposit under section 38 of the Act and section 4 of the tenancy agreement, and to recover the filing fee for the Application.

The Landlord filed for an order for money owed or compensation under the Act or tenancy agreement and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Issues

The Tenant claimed the Landlord had not provided a copy of an invoice for lawn mowing in his evidence package sent to her. The Landlord claimed the Tenant had not provided a copy of the photographs in her evidence package sent to him.

Therefore, I do not allow the evidence from the Landlord for the lawn mowing and I do not allow the photographic evidence from the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to the relief sought?

Is the Tenant entitled to return of double the security deposit?

Background and Evidence

This tenancy began on March 1, 2012, with the parties entering into a standard form written tenancy agreement, with an initial fixed term of one year. The first agreement had an addendum, allowing the Tenant to have pets, requiring the Tenant to do “yard work & snow removal”, and prohibiting smoking in the rental unit. The Monthly rent was \$1,000.00, and the Tenant paid the Landlord a security deposit of \$500.00 on or about March 8, 2012.

The parties entered into a second, one year fixed term tenancy agreement in the same standard form, with an increase in rent in the amount of \$100.00 per month; however, the addendum to this agreement only provided that the Tenant was allowed one pet cat and did not require the Tenant to perform yard work, snow removal, and was silent as to smoking.

During the course of the hearing the parties agreed that no pet damage deposit was taken, that no incoming or outgoing condition inspection reports were performed, and that the Tenant moved out of the rental unit on or about August 22, 2013.

The Tenant's Claim

The Tenant testified and submitted documentary evidence that she provided the forwarding address to return the deposit to in writing which was sent to the Landlord on August 23, 2013, in an email. The Landlord acknowledged receipt of the email and replied in an email that he was not returning the deposit for various reasons and that he accepted the Tenant's end of the tenancy as of August 31, 2013.

The Tenant did not agree to the Landlord retaining any of the security deposit.

The Landlord agreed to the above facts during the course of the hearing.

The Landlord filed his Application for monetary claims on October 24, 2013, although he did not claim to keep the security deposit.

The Landlord's Claim

The Landlord claims the Tenant damaged the rental unit property. He testified that the Tenant changed the locks at the rental unit property, and although he agreed to this verbally he did not provide his prior written consent for her to do this. The Landlord did not include a request for compensation on this issue.

The Landlord claimed the Tenant painted the tiles and grout in the bathroom in the basement. He testified that she removed some of the tiles. He testified she did not even need to use the bathroom in the basement as the rental unit has three bathrooms. He testified that the Tenant and her daughter could have just used the other two bathrooms. The Landlord claims \$1,000.00 to repair the bathroom, based on his own estimate. He provided no invoices or written estimates in evidence for this.

The Landlord claimed \$500.00 as the Tenant painted the breakfast nook in the rental unit. The Landlord claimed the Tenant also painted the upholstery around the breakfast nook. There were no invoices or estimates supplied, although the Landlord provided a photograph in evidence.

The Landlord was upset that in correspondence exchanged between the parties, the Tenant often referred to the rental unit as her home when he had not sold her the property, and he alleged she thought she owned the property.

The Landlord testified that the Tenant should have asked his permission first before doing any of this work and he did not consent to the work in writing.

The Landlord claims \$100.00 to repair a heating duct in the rental unit which he claims has the smell of cat urine coming from it. He suggested it might even have been the Tenant who urinated in the vent. He alleged he had to replace four sections of duct work. He did not submit invoices for this portion of his claim.

The Landlord claimed \$80.00 for lawn maintenance. He testified that when the tenancy ended he had to mow the lawns at the rental unit and the Tenant was responsible for this.

In reply, the Tenant testified she did not agree to the claims of the Landlord at all.

The Tenant testified and submitted in her written evidence that the Landlord purchased this property in a distressed state as a repossessed property, apparently referring to a property purchased through a foreclosure action.

The Tenant testified that the Landlord authorized each of the changes she made, because these were improvements to the property. The Tenant testified she had a verbal agreement with the Landlord to do the work. The Tenant testified that the Landlord agreed to and then paid for the materials or supplied materials for her to do this work at the property. The Tenant testified she did not photocopy the cheques the Landlord gave to her for materials and supplies, as she never expected he would claim against her for this work.

The Tenant further testified that any of the other damages the Landlord is claiming for were there when she moved in.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other. Once that has been established, they must then provide evidence that they suffered a loss and that can verify the value of the loss or damage. Finally it must be proven that the claiming party did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Tenant's Results

I find that the Landlord is in breach of section 38 of the Act and section 4 of the tenancy agreement.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

I find the Tenant and the Landlord established a pattern of communicating through email. I find the Tenant gave the Landlord the forwarding address in writing on August 23, 2013, and he acknowledged receipt of this email. I find the tenancy ended on August 31, 2013, when the Landlord accepted the end of the tenancy in writing to the Tenant.

The evidence indicates the Landlord had not applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38.

Furthermore, by failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

Therefore, I find the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or the written agreement of the Tenant. Here I find the Landlord did not have any authority under the Act to keep any portion of

the security deposit. Therefore, I must order he pay the Tenant double the security deposit, pursuant to section 38 of the Act.

The Landlord's Results

I dismiss all of the Landlord's claims without leave to reapply.

I find the Landlord had insufficient evidence to prove the Tenant breached the Act or tenancy agreement. Under section 37 of the Act, the Tenant is required to return the rental unit to the Landlord in a reasonably clean state and undamaged, except for reasonable wear and tear. I find the Landlord failed to prove the Tenant breached this portion of the Act.

I note that although the Landlord was given the opportunity to reply to the Tenant's claims regarding their arrangement and it was explained to him he had an opportunity to question or cross examine her, he declined to do so. Most importantly, I note the Landlord did not dispute her position that they had an arrangement whereby the Tenant did some work on the property, which included painting, and he reimbursed her for materials and supplies. I accept the Tenant's version of this arrangement based her undisputed testimony and on the Landlord's own photographic evidence. For example, the Landlord submitted a photograph of the kitchen nook. There is no apparent damage and in fact, this photograph depicts a very clean and neatly presented kitchen nook. There is no indication in the photo that the upholstery has been painted, or otherwise damaged. It would certainly be presentable in this state to any other renter without further work or cleaning. In fact, all of the Landlord's photographs depict a clean, freshly painted and presentable rental unit. There is no indication in the Landlord's own pictures that the Tenant was not keeping the rental unit in a reasonably clean state or that it was unsanitary.

As for the claims for the bathroom, I find the Landlord has insufficient evidence of the condition of the bathroom before the Tenant took possession of the rental unit. I find the Landlord failed to prove anything in this room was damaged by this Tenant during the tenancy.

As for the lawn mowing, under the second tenancy agreement addendum the Tenant was not required to mow the lawn. When the parties entered into a new tenancy agreement with a different addendum they did not agree in writing that the old addendum still applied, and instead attached a new one. Furthermore, even if the addendum had been carried forward (and I find no evidence of this), the Landlord failed

to provide a copy of the receipt for this to the Tenant in his evidence, and therefore this claim is dismissed for lack of proof.

As to the vent repairs, I find the Landlord had insufficient evidence to prove he suffered any losses or that he incurred any expense with this, as he submitted no invoices. Furthermore, I found the Landlord's allegations regarding the urine smell from the vent to be completely unsupportable, and in fact he had made a completely improper attempt to prejudice the character of the Tenant, rather than provide probative evidence. As a result, I found this unwarranted and unfounded statement harmed the credibility of the Landlord's testimony.

For all of the above reasons, I dismiss all of the Landlord's claims.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,050.00**, comprised of double the security deposit (2 x \$500.00) and the \$50.00 fee for filing this Application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

I find the Tenant has proven the Landlord breached the Act and tenancy agreement by failing to return or claim against the security deposit within 15 days of the end of the tenancy or receipt of the forwarding address in writing. Therefore, I must order the Landlord to pay the Tenant double the security deposit and her filing fee for the Application. The Tenant is granted and issued a monetary order enforceable in Provincial Court.

I find the Landlord had insufficient evidence to prove his claims against the Tenant. The Application of the Landlord is dismissed without leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 12, 2013

Residential Tenancy Branch

