



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, MNDC FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution pursuant to the *Residential Tenancy Act* (the Act).

The landlord filed on October 12, 2013 for Orders as follows:

1. A monetary Order for damages and loss (\$568.66) – Section 67
2. An Order to retain the security as offset - Section 38
3. An Order to recover the filing fee for this application (\$50) - Section 72.

The tenant filed on October 16, 2013 for Orders as follows:

1. An Order for double the security deposit (\$1400) - Section 38

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

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 on October 01, 2011. At the outset of the tenancy the landlord collected a security deposit in the amount of \$700.00 - held in trust.

The tenant vacated in the last week of September 2013. The parties agree that at the start of the tenancy the parties conducted a mutual move in inspection which was recorded and the condition inspection report (CIR) was submitted into evidence. The parties agree that at the end of the tenancy they conducted a mutual inspection of the rental unit but that the inspection was not recorded on a form as a CIR. The parties discussed the condition of the rental unit and the issues identified by the landlord, but the parties did not arrive at agreement as to the administration of the security deposit. The parties further agreed that on September 29, 2013 the tenant provided the landlord with their written forwarding address.

The tenant seeks the return of their security deposit and compensation of *double* the deposit as per Section 38 of the Act.

The landlord claims the tenant caused damage to the rental unit. The tenant claims that what the landlord alleges to be damage should be considered reasonable wear and tear - for which they would not be responsible. The tenant also argues that any alleged damage was not intentional or inadvertent or that it is insufficient damage to warrant remedy or expense.

The parties agree that at the end of the tenancy the tenant made certain wall repairs by filling nail holes with repair compound and sanding the repairs, but did not paint the repaired areas. The landlord seeks the cost of matching paint to complete those repairs and some other alleged deficiencies in other walls. The landlord provided photographic evidence of a quantum of screw / nail holes in the other walls, and a window sill, which the parties agree were left unrepaired. The tenant acknowledged that at the start of the tenancy they installed window coverings which they subsequently removed – leaving holes. The landlord is claiming \$100.00 labour and \$42.10 for matching paint in respect to repairing and painting all wall issues.

The landlord claims the tenant damaged a rung of blinds in one of the bedrooms. They provided photographic evidence of the blinds depicting a series of damaged vanes as well as an invoice for replacement of the blinds in the amount of \$126.56. The tenant acknowledged the damaged condition of the blinds however claims that the damage occurred because of the design of the window handle abutting the blind when the blind is closed and the window is left open to potential contact with the blind from air movement, or wind conditions. As a result, the tenant argues the damage was not the result of their conduct or their control and should be considered reasonable wear and tear. The landlord testified that the blind in the other bedroom occupied by the co-tenant was undamaged to which the tenant responded was due to non-use by the co-tenant.

The landlord claims the tenant discoloured portions or spots in the carpeting which require re-colouring to remediate. The landlord submitted photographs of the claimed damage depicting spots of different colour from the surrounding carpeting, and, an invoice for re-dyeing a total of 17 “bleach” spots in the amount of \$262.50. The tenant acknowledged using a cleaning solution to clean the areas of spotting, which unknowingly contained bleach - causing the carpet discolouration. The tenant disputes the landlord’s claim for compensation stating that the cleaning product was responsible for the discolouration and should be considered reasonable wear and tear. The tenant also provided written accounts from 3 individuals in support of the tenant’s assertions which all state that the rental unit was in “good condition” with no visible or apparent damage.

Analysis

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

Tenant's claim

I find that the landlord was obligated to generate and complete a condition inspection report (CIR) for the move out inspection in accordance with the Regulations respecting condition inspections. The landlord failed to complete such a CIR. Section 36(2) of the Act states that the landlord’s right to claim against the security deposit is *extinguished* if the landlord made an inspection with the tenant but does not complete a CIR and gives the tenant a copy.

As a result of the foregoing I find the Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the amount of the security deposit. I find that the tenant provided (their) forwarding address on September 29, 2013. I further find that as the landlord’s right to claim against the security deposit was *extinguished* they were precluded from making an application to claim against the security deposit and solely left obligated to repay the security deposit within 15 days of receiving the tenant’s forwarding address. The landlord failed to do so. As a result, I find that the tenant has established a claim pursuant to Section 38(6), which in relevant part states:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As a further result I find the tenant is entitled to return of their security deposit of \$700.00 and *double* that amount for a total of **\$1400.00**.

Landlord's claim

If a claim is made by the landlord for damages to property, the normal measure of damage is the cost of repairs or replacement 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 the landlord 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 the conduct or negligent actions of the tenant.

I find the evidence of the tenant and the landlord respecting the condition of the walls and the ancillary photographic evidence clearly shows large screw holes were left by the tenant in their actions to remove window coverings hardware. I find these holes are beyond the scope of reasonable wear and tear. I find the evidence presented in respect of all other holes identified in the rental unit indicates they are not excessive and can be attributed to reasonable wear and tear. As a result, I accept the landlord's claim that they had to expend labour and materials, such as paint, to remedy the damage. I further mitigate the landlord's claim and grant the landlord **\$100.00** for all wall repairs, inclusive of labour and materials.

In respect to the claim of damage to blinds, I've reflected on the tenant's assertion that window design and certain weather forces likely combined to damage the nearby blinds. I prefer the landlord's evidence in respect to this claim. On balance of probabilities I find that it was within the tenant's control to avoid the damage to the window blind. As a result, I grant the landlord **\$126.56** for their replacement costs.

I find that the tenant and landlord have, together, provided sufficient evidence establishing that solely the tenant's conduct caused discolouration, and effectively damage, to the carpeting. As a result, I grant the landlord their cost to remedy the carpet damage in the amount of **\$262.50**. As the landlord has been successful in their claim they are further entitled to recover costs of **\$50.00** for filing their application.

The security deposit being held by the landlord is offset in the resulting monetary award made herein as follows,

Calculation for Monetary Order

Tenant's award	\$1400.00
Wall remediation costs to landlord	-100.00
Blind replacement cost to landlord	-126.56
Carpet remediation cost to landlord	-262.50
Filing fee to landlord	-50.00
Total Monetary Award for tenant	\$860.94

Conclusion

The tenant's application has been granted.
 The landlord's application, in part, has been granted.

I grant the tenant an Order under Section 67 of the Act for the amount of **\$860.94**. 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: January 15, 2014

 Residential Tenancy Branch

