



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, MNDC, FF

Introduction

The hearing was convened to deal with an application by the landlord for a monetary order for damages and to retain the security deposit in partial satisfaction of the claim. The application was also convened to hear a cross application by tenant for the return of the tenant's security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served on the other party and submitted to the file at the Residential Tenancy Branch at least 5 days in advance of the hearing pursuant to the Act. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing.

Issues to be Decided for the Tenant's Application

- Is the tenant entitled to a refund of double the security deposit paid?

Issues to be Decided for the Landlord's Application.

- Is the landlord entitled to compensation under section 67 of the *Act* for damages?

Background and Evidence

The tenancy began on May 1, 2013 and ended on October 1, 2013. The monthly rent was \$700.00 and a security deposit of \$350.00 was paid.

The tenant stated that the landlord did not refund the security deposit within 15 days and the tenant is claiming a refund of double the security deposit in the amount of \$700.00. The landlord applied for dispute resolution on November 15, 2013.

The landlord testified that they are seeking monetary compensation in the amount of \$2,425.00 for the following claims:

- \$700.00 loss of rent for the month of October
- \$80.00 for cleaning services
- \$95.00 for carpet shampooing
- \$50.00 to clean the stove and oven
- \$150.00 estimated to repair the garden
- \$1,000.00 for mental/emotional stress and the time/energy spent
- \$350.00 additional payment of security deposit
- \$50.00 for the cost of the application

The landlord submitted a copy of the tenancy agreement, copies of communications, copies of receipts and written testimony.

According to the landlord, the tenant over-held the unit by remaining in possession past the last day of September 2013 and the landlord feels entitled to be paid \$700.00 loss of rent for October as a result.

The landlord testified that general cleaning costing \$80.00 was necessary and the carpet required cleaning at a cost of \$95.00. The landlord pointed out that the stove and oven required cleaning and they paid a cleaner \$50.00 to clean the appliance.

The landlord stated that, although they found out that the rental unit was not clean when the tenant originally moved in, the previous owner had apparently credited the tenant with \$75.00 to clean the rental unit. The landlord's position is that the tenant is required to leave the rental unit in a "*move-in ready*" state pursuant to a clause in the tenancy agreement.

The landlord testified that the tenancy agreement is silent on the subject of use of the yard for gardening. Therefore the landlord has concluded that the tenant was not entitled to utilize the yard for planting a garden. The landlord stated that the previous owner had rototilled the garden prior to their purchase and this garden area was not for the tenant to use. The landlord has obtained an estimate of \$150.00 for the cost to remove the tenant's plants.

The landlord also seeks what appear to be aggravated damages in the amount of \$1,000.00, for mental and emotional stress and the time and energy they spent dealing

with the tenancy. However, no evidence was submitted to support the aggravated damages claim.

In addition to the above, landlord is also claiming the right to keep the tenant's \$350.00 security deposit.

The total claim is for \$2,425.00.

The tenant acknowledged that they did not shampoo the carpets. However, the tenants are disputing all of the landlord's other monetary claims listed above, except for the carpet cleaning costs.

Analysis

Tenant's Claim for Return of Double the Security Deposit

In regard to the return of the security deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or make an application for dispute resolution to claim against the security deposit.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In this instance I find that the landlord had received the tenant's written forwarding address by November 1, 2013 when the tenancy ended and I find that the landlord did make their application for dispute resolution within 15 days.

Accordingly, I find that the tenant is not entitled to receive a credit or refund of double the \$350.00 security deposit. I find that the landlord is currently holding \$350.00 in trust for the tenant.

Landlord's Claim For Damages - Cleaning Costs and Yard Repairs

With respect to a monetary claim for damages and loss, it is important that the evidence furnished by each applicant/claimant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,

2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that, under the Act, a tenant is not required to leave a rental unit “move-in-ready”, I find that the standard to be applied, regardless of any tenancy terms imposing a higher standard, is “reasonably clean”

To determine whether or not the tenant had complied with this standard, I find that this can best be established through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Completing move-in and move out condition inspection reports is a requirement under the Act under sections 23(3) and section 35. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, I find that either a move-in condition inspection report, nor a move-out condition inspection report had been submitted into evidence. I find that the absence of the reports and the landlord's failure to comply with the Act, have hindered the landlord's ability to prove that the tenant should be held accountable for the costs of cleaning or repairs.

The landlord has offered verbal testimony in regard to the extent of the cleaning. However, with the exception of the carpet-cleaning cost, the tenant is disputing the claims. The tenant's position is that the rental unit was merely subject to normal wear and tear. The tenant stated that the rental unit was left reasonably clean, but the tenant did acknowledge that the carpets were not shampooed at the end of the tenancy.

Due to insufficient evidence from the landlord and the lack of the move-in and move-out condition inspection reports, I find that I am unable to determine what

whether the rental unit was left in a reasonably clean state. However, I find that the landlord is entitled to \$95.00 for the cost of the carpet cleaning.

In regard to the tenant's alleged damage of the yard by using the garden, I find that the tenant clearly understood that the garden was there for the tenant's use, and nothing in the tenancy agreement indicates otherwise. I find that the landlord has not proven a violation of the Act or agreement on the part of the tenant.

In addition to the above, I find that the landlord did not furnish sufficient proof of the claimed expenditures. I therefore find that the landlord's monetary claim for the garden damage failed to satisfy elements 2 and 3 of the test for damages and must therefore be dismissed.

Landlord's Loss of Revenue

I accept the landlord's testimony that the tenant over-held the rental unit beyond the last day of the month by remaining in possession until October 1, 2013. The landlord is claiming \$700.00, which is the loss of a full month rent.

However, I find that the landlord is only entitled to be compensated for the pro-rated amount of rent for the one-day period that the tenant remained in possession of the unit. I find that the tenants therefore owe the landlord \$23.00 for the pro-rated rent for October 1, 2013.

Aggravated Damages

With respect to the landlord's claim of \$1,000.00 per month for mental and emotional stress and inconvenience, I find insufficient evidence to support this claim as a valid tangible loss and I also find that that a situation of this nature does not justify awarding aggravated damages for intangible losses. Therefore, this portion of the landlord's application is dismissed.

Claiming Tenant's Security Deposit in Addition to Damages

The landlord has submitted that the tenant's security deposit should be awarded as a claim, in addition to the above. However, the security deposit is money that is held in trust on behalf of the tenant and the funds belong to the tenant as a refund, unless and until the landlord proves that the deposit should be retained by the landlord as compensation towards damages or money owed. I find that the tenant's security deposit is considered a credit in favour of the tenant and is therefore to be deducted from any successful monetary claim awarded to the landlord, not added as an additional debt.

I find that the landlord is entitled to total compensation of \$117.50 comprised of \$94.50 cost of carpet cleaning and \$23.00 for one day rent for over-holding into October 2013. The remainder of the landlord's application is dismissed without leave.

I order that the landlord retain this amount from the tenant's \$350.00 security deposit leaving a remainder of \$232.50 owed to the tenant.

Each party is responsible for the cost of their own applications.

I hereby grant the tenant a monetary order in the amount of \$232.50.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant and the landlord are both partly successful in their respective applications and the tenant is granted a refund of double the security deposit. The remainder of the landlords application is dismissed without leave.

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: February 11, 2014

Residential Tenancy Branch

