



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF, O

Introduction

This hearing dealt with two related applications. One file is the landlords' application for a monetary order and an order permitting retention of the security deposit. The other file is the tenant's application for a monetary order, including an order for return of double the security deposit. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same for both applications, one decision will be rendered for both.

Issue(s) to be Decided

- Is either party entitled to a monetary order and, if so, in what amount?
- What disposition should be made of the security deposit?

Background and Evidence

This month-to-month tenancy commenced July 1, 2011. The rental unit is a one bedroom apartment, approximately 700 square feet in size. At first the rent was to be \$725.00 but was subsequently reduced to \$625.00. It is common ground that the tenant paid a security deposit of \$362.50.

The landlord bought the property in May of 2013. He testified that he has no personal knowledge of events prior to buying the building.

The tenant testified that she thought she paid a pet damage deposit as well but she could not find the receipt. The landlord pointed out that the note on the tenancy agreement says the pet damage deposit was never paid. The tenant did have cats.

The tenant testified that a move-in inspection was not conducted and a move-in condition inspection report was not completed.

The tenant gave notice to end tenancy effective November 30. When she gave her notice the tenant expected to be moving into a different place. Unfortunately those

arrangements fell apart. The tenant attempted to rescind her notice but by then the landlord had re-rented the unit to someone else for December 1.

The tenant uses a wheel chair and has other health issues. She is assisted by the local brain injury society. When the tenant found herself in a difficult situation after her plans fell through the society found her alternate accommodation in a motel. They also undertook responsibility for organizing her move. The process was described as a scramble for everybody.

The landlord went to the rental unit on November 26. By this time the tenant had been moved to the motel. People from the society were there as were several movers. The tenant had given the society a list of the items she wanted moved from the unit. The people from the society told the landlord the tenant had moved and was not coming back. They also confirmed that they would only be moving the items requested by the tenant; they would not be doing any cleaning; and they would be out by noon on the 27th.

The landlord returned to the rental unit at noon on the 27th. The people from the society gave the landlord the keys, the name of the motel where the tenant was staying, and the telephone number there.

The landlord spoke to the tenant on the telephone. She apologized for not being able to clean the unit and told the landlord he could keep the security deposit for cleaning.

The landlord and his crew started work on the 27th. They cleaned the unit, including cleaning and deodorizing the carpets three times. The tenant's wheelchair had caused some damage to the drywall in several locations. Those areas were filled and sanded and only the damaged walls repainted. All of the items left behind by the tenant had to be hauled to the dump. The blinds were damaged and replaced.

Although the tenant and the witness from the society felt that the situation in the unit was not quite as serious as described by the landlord they did acknowledge that no cleaning had been done and that the wheelchair may have caused some damage to the walls. The tenant was adamant that the blinds were damaged at the start of the tenancy and that their condition was unchanged at the end.

The landlord claimed the following for cleaning and repairs:

- Labour for his four workers, who were paid \$12.00 to \$14.00 each - \$532.25

- Cleaning materials - \$25.00

- New blinds 0 \$75.00

- His labour – 6 hours at \$25.00/hour - \$150.00

Dump fees - \$11.25

It is common ground that the landlord gave the tenant a copy of the move-out condition inspection report a few days after the end of the tenancy.

The witness from the brain injury society testified that on December 3 they the sent the landlord a letter giving their address as the tenant's forwarding address. The landlord filed this application for dispute resolution on December 17.

The tenant's rent cheque had been paid directly to the landlord by the Ministry. The tenant did not cancel this arrangement before the December rent cheque in the amount of \$625.00 was sent to the landlord. The landlord cashed this cheque and kept the funds as security for the cleaning and damages he was claiming. The tenant says he has no legal right to that money and asks for its return.

Analysis

Landlords' Claim for Damages

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

The onus is on the landlord to prove that the blinds were in good condition at the start of this tenancy. In this case the landlord did not see the unit at the start of this tenancy nor is there a move-in condition inspection report that described the condition of the blinds at that time. The only evidence is the tenant's sworn testimony that the blinds were not in good condition at the beginning of the tenancy. The landlord has not been able to prove this element of his claims on a balance of probabilities and so the claim regarding the blinds must be dismissed.

Having heard the evidence of both parties and considered the amounts claimed by the landlord I allow the balance of the landlord's claim for cleaning and repairs - \$718.50.

Security Deposit

I find that the tenant only paid a security deposit. I base this decision on the following facts:

- The tenancy agreement says a pet damage deposit was never paid.
- The tenant was not able to provide any proof of payments of a pet damage deposit.
- The tenant's application for dispute resolution only refers to return of the security deposit.

As explained in *Residential Tenancy Policy Guideline 17: Security Deposit and Set Off*, the obligations of a landlord with respect to a security deposit run with the land or the reversion. Thus, if the landlord changes the new landlord retains those obligations and liabilities.

Section 23 of the *Residential Tenancy Act* provides that at the beginning of every tenancy the landlord and tenant must complete a move-in condition report in accordance with the regulation. There is no evidence that a move-in inspection was conducted or that a move-in condition inspection report was completed.

Section 24 sets out the consequences for both parties if the report is not completed. For landlords the consequence is that a landlord's right to claim against a security deposit or pet damage deposit is extinguished. It is important to remember that the subsection does not extinguish the landlord's right to claim for damages.

Section 38(1) provides that within fifteen 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 security deposit or, if the landlord has the legal right to do so, file an application for dispute resolution claiming against the security deposit.

Although the landlord did file the application for dispute resolution within fifteen days of receiving the tenant's forwarding address in writing, the right to do so had already been extinguished. The landlord's only option was to repay the security deposit to the tenant.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this point. Accordingly, I find that the tenant is entitled to payment of \$725.00.

December Rent

As the tenant did not rent the unit in December she is entitled to return of the December rent in the amount of \$625.00.

Filing Fee

As the landlord was substantially successful on his application I find that he is entitled to reimbursement from the tenant of the \$50.00 fee he paid to file it. The tenant did not have to pay a fee to file her application so no other order is required.

Set Off

I have found that the landlord has established a total monetary claim of \$768.50 comprised of cleaning and damages in the amount of \$718.00 and the \$50.00 fee he paid to file the application. I have found that the tenant has established a total monetary claim of \$1375.00 comprised of return of double the security deposit in the amount of \$725.00 and the December rent in the amount of \$650.00. Setting one amount off against the other I find that the tenant is entitled to payment from the landlord in the sum of \$606.50 and I grant the tenant a monetary order in that amount.

Conclusion

A monetary order in favour of the tenant has been made. If necessary, this order may be filed in the 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: February 28, 2014

Residential Tenancy Branch

