



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD

For the landlord: MND MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for a monetary order for return of double her security deposit under the Act. The landlord applied a monetary order for damage to the unit, site or property, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure and that was presented; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

On December 17, 2013, the hearing was adjourned to allow time for the landlord to receive the registered mail package and to serve rebuttal evidence on the tenant. At the reconvened hearing on March 3, 2014, the parties confirmed that they received evidence from the other party and that they had the opportunity to review that evidence prior to the hearing.

Prior to the reconvened hearing, the landlord attempted to increase his monetary claim through the submission of evidence. At the start of the reconvened hearing, the landlord was advised that his attempt to increase his monetary claim was not being permitted as he did not properly amend his application in accordance with the Rules of Procedure. The landlord stated that he understood.

During the hearing the landlord requested to reduce his monetary claim from \$1,100.00 to \$724.00. I find that a reduction in the landlord's monetary claim does not prejudice the tenant and as a result, the landlord was permitted to reduce his monetary claim to \$724.00.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The parties agreed that there were three fixed term tenancies, the first of which began on September 15, 2009 and the last of which reverted to a month to month tenancy agreement after October 1, 2012. The parties agree that the tenancy ended on August 31, 2013 by mutual agreement.

The parties disputed whether a security deposit was paid during the tenancy. The landlord testified that the tenant failed to pay a security deposit of \$550.00 during the tenancy. The tenant testified that she paid a security deposit of \$550.00 on September 15, 2009, and that the landlord did not issue a receipt. The tenant testified that she would always pay her rent in cash and that the landlord did not issue receipts for the monthly rent paid in cash. The landlord confirmed during the hearing that the tenant did pay her rent in cash and that he did not issue receipts to the tenant during the tenancy for rent paid in cash.

Evidence for Tenant's Claim

The tenant is claiming for the return of double her security deposit of \$550.00 for a total monetary claim of \$1,100.00. The tenant stated that she provided her written forwarding address to the landlord in an e-mail dated September 9, 2013, which the landlord disputed receiving. The landlord did confirm; however, having received a forwarding address from the tenant in an e-mail dated September 26, 2013, which was referred to

by the tenant in the landlord's evidence during the hearing. The landlord did not file his application claiming towards the security deposit until November 20, 2013.

The tenant stated that she provided her written forwarding address again on December 2, 2013 after she received the landlord's new address by mail when she received his application for dispute resolution.

Evidence for Landlord's claim

The landlord is claiming a monetary order in the amount of \$724.00 comprised of the following:

Item #	Description	Amount
1	Cleaning of rental unit	\$105.00
2	Carpet cleaning	\$69.00
3	Damage to bathroom sink	\$550.00
	TOTAL	\$724.00

Landlord Item #1 of 3

The landlord has claimed \$105.00 for cleaning of the rental unit. The parties disputed that a condition inspection report was completed at the end of the tenancy. The landlord testified that he hired "LM" to complete an outgoing condition inspection report. The tenant called "LM" as a witness and "LM" testified under oath that he was not hired to complete an outgoing condition inspection report, was never provided a copy of the incoming condition inspection report, and never agreed to complete an outgoing condition inspection report on behalf of the landlord.

The landlord later stated that on September 26, 2013, the landlord completed an outgoing condition inspection report and that he did not provide any notice in writing to the tenant of that inspection on September 26, 2013 as he "felt threatened" by the tenant. The tenancy ended on August 31, 2013 by mutual agreement.

The landlord testified that he did not submit a receipt in support of this portion of his claim as he performed the cleaning himself and there was no receipt as a result. The landlord stated that he was charging three hours at \$35.00 per hour for a total of \$105.00 to clean the rental unit. The landlord referred to photos 4, 5, 6, 7, 8, 9 and 15 in the landlord's evidence, none of which were dated. Regarding photos 4 and 5, the

landlord stated that there was some rust on the balcony which the tenant acknowledged. The landlord claims photo 6 shows marks on the wall, which the tenant claimed were normal wear and tear marks. The landlord stated that the interior paint in the rental unit was ten years old at the start of the tenancy in 2009. The landlord stated photo 7 shows dirt behind the stove, while photo 8 shows behind the fridge. The tenant stated that she did not clean behind the stove and fridge because she was concerned about damaging the tile flooring if she moved the stove and fridge. Photo 9 showed behind the washer and dryer, according to the landlord, while photo 15 showed what appeared to be a crack in the sink. The tenant confirmed that when she was working on the light fixture above the sink, it dropped into the sink, causing the crack in the sink. The landlord stated the sink was six years old in 2009.

Landlord Item #2 of 3

The landlord has claimed \$69.00 for carpet cleaning. The landlord submitted a receipt for carpet cleaning in the amount of \$69.00 from a carpet cleaning company. The tenant stated that she did not rent a machine to clean the carpet which was a 10 foot by 10 foot carpet, or 100 square feet of carpet, and stated that she hand scrubbed the carpet as that was the more “eco friendly” way to clean the carpet. The landlord stated the carpet was 10 years old at the start of the tenancy and that there were no photos of the carpet at the end of the tenancy. The landlord alleged that there were stains on the carpet at the end of the tenancy, which the tenant denied.

Landlord Item #3 of 3

The landlord has claimed \$550.00 for damage to the sink. Although the tenant confirmed that she dropped a light fixture into the sink causing the sink to crack, the landlord testified that he sold the rental unit and did not have the sink repaired prior to selling the rental unit. The landlord stated that the new owner incurred a loss and that he had to pay the new owner \$750.00 and is only claiming \$550.00 against the tenant. The landlord failed to provide a receipt to support this portion of his claim; however, he did refer to an estimate submitted on page 39 of the landlord's evidence, which gives a range of \$460.00 to \$550.00 plus GST for the sink, materials and labour to replace the sink.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

Test for damages or loss

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.

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.

Tenant's Claim

The tenant has claimed for the return of double her security deposit under the *Act*. As the landlord disputed that a security deposit was paid, I will first determine whether a security deposit was paid. The landlord testified that he failed to issue a receipt for rent paid by the tenant in cash and that rent was paid in cash by the tenant during the tenancy. Section 26(2) of the *Act* states that a landlord **must provide a tenant with a receipt for rent paid in cash**. As a result, I find the landlord breached section 26(2) of the *Act* based on his own testimony. Furthermore, the landlord applied to keep all or part of the tenant's security deposit in his application. As a result, and on the balance of probabilities, I accept that the tenant paid a security deposit of \$550.00 at the start of the tenancy as claimed by the tenant on or about September 15, 2009. I find it reasonable that if the landlord did not receive a security deposit that he would not claim towards keeping the security deposit. Furthermore, I find that by failing to issue any receipts for payments received by the tenant in cash, that the landlord's own actions contributed to the landlord failing to provide sufficient evidence to prove that a security deposit was not paid by the tenant.

The tenant's security deposit of \$550.00 has accrued no interest since the start of the tenancy. Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

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

(a) may not make a claim against the security deposit or any pet damage deposit, and

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

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

[emphasis added]

The landlord confirmed that he received a September 26, 2013 e-mail from the tenant which included the forwarding address of the tenant, and which was submitted in the landlord's evidence and was referred to by the tenant. The landlord did not submit his application claiming towards the tenant's security deposit until November 20, 2013. Based on the above, **I find** the landlord breached section 38 of the *Act* by failing to return the tenant's security deposit of \$550.00 within 15 days of receiving the tenant's forwarding address written in an e-mail on or about September 26, 2013, which is a later date than the end of tenancy date which was August 31, 2013. The landlord waited almost two full months before submitting his application for dispute resolution. In addition, the landlord had no right under the *Act* to retain any portion of the tenant's security deposit and the tenant did not authorize the landlord to retain any portion of her security deposit. Therefore, **I find** the tenant has met the burden of proof to prove her claim and is entitled to the return of double her security deposit of \$550.00 for a total amount of **\$1,100.00** from the landlord.

Landlord's Claim: Item 1

The landlord has claimed \$105.00 for cleaning of the rental unit. Although the parties disputed that a condition inspection report was completed at the end of the tenancy, I prefer the testimony of the tenant over the landlord regarding the outgoing condition inspection report not being completed during the tenancy, as I find the tenant's witness "LM" to be credible. I find the testimony of witness LM to be consistent and did not change during the hearing. Furthermore, witness LM refuted the landlord's allegation that he was hired to complete an outgoing condition inspection report.

The landlord testified that he did not submit a receipt in support of this portion of his claim as he performed the cleaning himself and there was no receipt as a result. The landlord stated that he was charging three hours at \$35.00 per hour for a total of \$105.00 to clean the rental unit.

Regarding photo 4 and 5, I find those photos show minor rust marks which the parties indicate were on the balcony. I find those to be normal wear and tear in this matter as the tenancy was approximately four years in length.

Regarding photo 6, I find this photo to show normal wear and tear marks on the wall. The landlord testified that the interior paint of the rental unit was ten years old at the start of the tenancy, which after a four year tenancy would make the interior paint approximately fourteen years old. Residential Tenancy Branch Policy Guideline #40 indicates that the useful lifespan of interior paint is four years. As a result, I find the useful lifespan of the interior paint of the rental unit had already expired about six years before the tenancy began.

Regarding photos 7, 8, and 9, I find the landlord has provided insufficient evidence to prove that the washer, dryer, stove and fridge were on rollers, and could be easily moved by the tenant without damaging the flooring. Residential Tenancy Branch Policy Guideline #1 regarding Responsibility for Residential Premises for the Landlord and Tenant – Major Appliances indicates that if the fridge and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damage the floor. The tenant testified that she was worried about damaging the tiles flooring and the onus of proof for this portion of the landlord's claim is on the landlord. Furthermore, I find the remainder of the photos do not support that the tenant failed to leave the rental unit reasonably clean except for reasonable wear and tear. Given the above, and my finding that the landlord failed to complete an outgoing condition inspection report with the tenant, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Landlord's Claim: Item 2

The landlord has claimed \$69.00 for carpet cleaning. The landlord submitted a receipt for carpet cleaning in the amount of \$69.00 from a carpet cleaning company. The tenant stated that she did not rent a machine to clean the carpet which was a 10 foot by 10 foot carpet, or 100 square feet of carpet, and stated that she hand scrubbed the carpet as that was the more "eco friendly" way to clean the carpet. The landlord alleged that there were stains on the carpet at the end of the tenancy, which the tenant denied. The landlord did not submit any photos of the carpet.

Residential Tenancy Branch Policy Guideline #1 regarding Responsibility for Residential Premises for the Landlord and Tenant – Carpets, states that the generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the

carpets after a tenancy of one year. The tenant confirmed that she did not rent a machine and hand scrubbed the carpet, which I find is not sufficient after a tenancy of approximately four years. As a result, **I find** the landlord has met the burden of proof for this portion of this claim, and is entitled to **\$69.00** for carpet cleaning as claimed.

Landlord's Claim: Item 2

The landlord has claimed \$550.00 for damage to the sink. Although the tenant confirmed that she dropped a light fixture into the sink causing the sink to crack, the landlord testified that he sold the rental unit and did not have the sink repaired prior to selling the rental unit. The landlord stated that the new owner incurred a loss and that he had to pay the new owner \$750.00 and is only claiming \$550.00 against the tenant. The landlord failed to provide a receipt to support this portion of his claim; however, he did refer to an estimate submitted on page 39 of the landlord's evidence, which gives a range of \$460.00 to \$550.00 plus GST for the sink, materials and labour to replace the sink.

Based on the above, and without a statement of accounts from the sale of the rental unit to support that the landlord suffered a loss of \$750.00 as he stated during the hearing, although he has claimed \$550.00 for the damaged sink, **I find** the landlord has failed to provide sufficient evidence to support the full amount of this portion of his claim, which was for \$550.00. I do accept; however, that the tenant admitted to damaging the sink during the tenancy and therefore, **I grant the landlord a nominal amount of \$100.00** for the damage caused to the sink by the tenant during the tenancy.

As some of the landlord's claim had merit, **I grant** the landlord the recovery of their filing fee in the amount of **\$50.00**.

The tenant has established a total monetary claim in the amount of \$1,100.00, comprised of double her security deposit.

The landlord has established a total monetary claim in the amount of \$219.00, comprised of \$69.00 for carpet cleaning, \$100.00 for damage to the rental unit sink, plus the \$50.00 filing fee.

I offset the landlord's monetary claim of \$219.00 from the tenant's monetary claim of \$1,100.00, leaving a balance owing by the landlord to the tenant in the amount of \$881.00. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$881.00**. 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 has been granted double her security deposit for a total of \$1,100.00 which has been offset from the landlord's monetary claim of \$219.00 for a total owing by the landlord to the tenant in the amount of \$881.00.

The tenant has been granted a monetary order in the amount of \$881.00 which must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless 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: March 12, 2014

Residential Tenancy Branch

