



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF, O

Introduction

This hearing dealt with cross applications. The tenant applied for return of double the security deposit and costs associated with filing this Application. The landlord applied for monetary compensation for cleaning and damage; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the tenant entitled to doubling of the security deposit?
2. Did the landlord establish an entitlement to compensation for cleaning and damage?
3. Is the landlord authorized to retain any party of the security deposit?

Background and Evidence

The tenancy commenced July 1, 2009 and the tenant paid a security deposit of \$575.00 on June 3, 2009. The tenancy ended December 31, 2013. The landlord did not prepare move-in or move-out inspection reports.

On January 2, 2014 the tenant left a letter containing his forwarding address in the mail slot at the landlord's service address. The landlord acknowledged receiving the tenant's forwarding address on January 3 or 4, 2014. The tenant did not authorize the landlord to make any deductions from the security deposit. The landlord has not refunded the security deposit.

By way of an Application for Dispute Resolution filed on January 27, 2014 the tenant seeks return of double the security deposit plus recovery of the filing fee paid for this

Application for Dispute Resolution and the registered mail costs for mailing the hearing documents to the landlord.

The landlord filed an Application for Dispute Resolution claiming against the security deposit on February 6, 2014 and compensation totalling \$710.00 for cleaning, fob replacement or repair, and plumbing costs.

The landlord explained that he filed against the security deposit more than 15 days after receiving the forwarding address because it took some time to obtain estimates for plumbing repairs. The landlord also alleged that a staff person with the Residential Tenancy Branch advised him that he could file a late claim against a security deposit if he had a good reason for doing so.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses:

1. Cleaning

The landlord requested compensation of \$200.00 for cleaning. The landlord provided a print-out from a cleaning website as evidence that a move-out cleaning usually costs between \$235.00 and \$285.00. The landlord submitted that he paid a cleaner \$225.00 but that since the cleaning was to bring the unit to a state of cleanliness appropriate for selling the unit the landlord seeks to hold the tenant responsible for only \$200.00 of the cleaning charge.

In filing this Application for Dispute Resolution, the landlord asserted that the tenant did not clean anything in the unit and basically moved out. During the hearing, the landlord testified that it appeared as though the tenant wiped surfaces down and swept but that the unit was still dirty and grimy.

The landlord asserted that he had photographs and could obtain a receipt for the cleaning costs; however, such evidence was not provided for this proceeding.

The tenant submitted that he left the unit in a reasonable condition when he vacated the rental unit, explaining that he wiped surfaces down and vacuumed. The tenant acknowledged there were carbon stains on the stove-top but submitted those were present when his tenancy began.

The tenant also pointed to the landlord's inconsistent submissions with respect to the state of cleanliness at the end of the tenancy.

2. Fob repair or replacement

The landlord is seeking \$60.00 for fob repair or replacement. The landlord submitted that the fob returned by the tenant no longer worked.

The landlord explained that when he rented out the unit he obtained an extra fob from the strata at a cost of \$60.00. The landlord stated the rental unit has since been sold and he turned in the two fobs he had. The landlord acknowledged that he was not charged for a broken fob and made this claim on the basis he would have suffered a loss if he had re-rented the unit.

The tenant testified that the fob worked the last time he used it and he denied breaking it before returning it to the landlord. The tenant stated the fob did not work well on a few occasions during his tenancy but that the concierge of the building was able to make it work better.

3. Plumbing

The landlord seeks to recover \$400.00 from the tenant for plumbing repair costs to the shower diverter. The landlord submitted an estimate dated January 26, 2014 for \$1,396.50 to replace the shower diverter and bathroom sink tailpiece. The shower diverter had to be replaced and to do so the shower wall tiles had to be removed and replaced.

The landlord submitted the tenant should be held responsible for a portion of the repair costs because the tenant did not report a rattling sound the shower made and that failing to do so may have resulted in additional repair costs. I heard the rental unit was constructed in 1999.

The tenant acknowledged that he had heard a rattle when he used the shower but the tenant did not accept responsibility for the repair of the shower diverter. Rather, the tenant submitted that previous plumbing issues he raised during the tenancy (a slow shower drain and overflowing toilet) were not sufficiently addressed by the landlord.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to each Application.

Tenant's Application

Section 38 of the Act provides for the return of security deposits. Section 38(1) provides that where a landlord does not have written authorization from the tenant, or prior authorization from an Arbitrator, to make deductions from a security deposit the landlord must either return the security deposit to the tenant or file an Application for Dispute Resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act. That being said, unless the tenant expressly waives entitlement to doubling of the deposit, there is no exemption to this requirement as suggested by the landlord.

Since the landlord acknowledged receiving the tenant's forwarding address no later than January 4, 2014 I find the landlord had until January 19, 2014 to either refund the security deposit to the tenant or file an Application for Dispute Resolution claiming against it. Since the landlord failed to meet his obligation with respect to section 38(1) of the Act, I find the landlord must now pay the tenant double the security deposit. I further award the tenant recovery of the \$50.00 filing fee the tenant paid for his Application. I make no award for recovery of the registered mail costs as costs associated with making an Application for Dispute Resolution are not recoverable under the Act with the exception of the filing fee.

Landlord's Application

Awards for compensation are provided in section 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.

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. It is important to note that 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.

Below, I have analyzed each of the three components of the landlord's claims against the tenant.

1. Cleaning

The tenant is required to leave the rental unit "reasonably clean" at the end of the tenancy. In the absence of photographs, condition inspection reports, the cleaning receipt or invoice, or other evidence, I find the disputed verbal testimony of the parties to be insufficient for me to conclude the tenant failed to leave the rental unit "reasonably clean". Therefore, I deny the landlord's claim for cleaning costs.

2. Fob repair or replacement

Based upon the landlord's own admission, the landlord did not incur any costs or loss associated to a broken fob. In the absence of a loss the landlord is not entitled to compensation for this item from the tenant. Therefore, I dismiss this portion of the landlord's claim.

3. Plumbing costs

Where a landlord seeks to hold a tenant responsible for repairs the landlord has the burden to show the item was damaged by the tenant's actions or negligence. The Act provides that reasonable wear and tear is not damage. Wear and tear is the natural deterioration due to use and the aging process.

Based upon the consistent testimony of the parties, I accept that a rattling sound was heard coming from the shower during the tenancy. However, I find there is a lack of evidence to demonstrate that the necessary repair would have been avoided had the landlord been notified of the rattling sound sooner. Also of consideration is the age of shower diverter.

Residential Tenancy Policy Guideline 40 provides for the average useful life of building elements. Based upon the guidelines, I find the shower diverter had an average useful life of 15 years. Considering the building was constructed in 1999 and I was not provided any evidence to suggest the shower diverter had been replaced prior to 2014 I find the shower diverter was likely at the end of its useful life and that its age is just as likely the reason for the need for replacement.

In light of the above, I dismiss the landlord's request to hold the tenant responsible for a portion of the plumbing repairs to the shower diverter.

Monetary Order

As I have dismissed all of the landlord's claims against the tenant I provide the tenant with a Monetary Order in the amount of \$1,200.00 being the security deposit, doubled, plus recovery of the \$50.00 filing fee $[(\$575.00 \times 2) + \$50.00]$.

To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$1,200.00 for return of double the security deposit and recovery of the filing fee.

The landlord's claims have been dismissed.

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: May 08, 2014

Residential Tenancy Branch

