



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, MNDC, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of replacing a stove top and for the filing fee. The tenant applied for a monetary order for the return of double the security deposit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order? Is the tenant entitled to the return of double the security deposit?

Background and Evidence

The tenancy started on December 01, 2012. The monthly rent was \$1,260.00 due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$830.00. The tenancy ended on February 28, 2014, pursuant to an order of possession granted to landlord for landlord's use of property.

The landlord stated that he had plans to move into the rental unit but due to health issues resulting from a fall, he moved into a different residence. The landlord stated that as of the date of the hearing, the rental unit was unoccupied.

On February 28, 2014, the day that the tenant moved out, the landlord visited the rental unit. The tenant handed over the keys and fobs to the landlord and the landlord signed a note confirming that he had received them.

The landlord did not do an inspection and did not inform the tenant of any discrepancies inside the rental unit. The tenant stated that he provided the landlord with his forwarding address that same day and waited for the return of the security deposit. The tenant left phone messages for the landlord which were not returned. The tenant filed copies of redirected mail to support his testimony that the landlord was aware of his forwarding address but did not return the security deposit or contact the tenant to report any damage.

The landlord stated that he carried out an inspection in the absence of the tenant sometime before March 15, 2014. The landlord was not sure of the date. He stated that during this inspection he noticed the damage to the stove top and took photographs.

On March 21, 2014, the tenant sent the landlord by registered mail, his forwarding address in writing with a request for the return of the deposit. When the tenant did not hear back by April 14, 2014, he filed for dispute resolution.

On July 31, 2014, the landlord also made application for dispute resolution and claimed for the cost of replacing the stove top that he alleges was damaged by the tenant. The landlord filed photographs of the stove top that show some discoloration around the burner heads. The landlord stated that to replace the stove top will cost \$600.00 and that he had not yet replaced it because he was waiting for the outcome of this hearing. The landlord agreed that the stove worked well

Analysis

Landlord's application:

The move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently using a flashlight if necessary as it is the only opportunity to identify damage that the tenant is responsible for. The burden of proof is on the landlord to prove that the tenant is also responsible for additional damage that is identified after the move out inspection.

Based on the testimony of both parties I find that the landlord attended the rental unit on the day that the tenant moved out. It was during this visit that the tenant handed over the keys to the landlord. The landlord had not offered any opportunities to the tenant to conduct a move out inspection prior to the last day of tenancy.

The landlord also did not conduct a move out inspection during his visit on the last day of tenancy and did not report any damage to the tenant.

I further find that the landlord did not contact the tenant regarding the damage that he wants the tenant to take responsibility for and made no effort to return the deposit to the tenant. The landlord made application on July 31, 2014 which is five months after the end of tenancy and after the tenant applied for the return of the deposit.

Based on the above, I find that the landlord made his application in response to the tenant's application for the return of the security deposit. I further find that the landlord had the opportunity to notify the tenant of the damage during his visit on the last day of tenancy or shortly after he noticed the damage. The landlord failed to do so. The landlord stated he conducted an inspection in the absence of the tenant but was not sure of the date of the inspection.

For the above reasons, I find that the landlord has not proven that the damage to the stove top was caused by the tenant. If the tenant was responsible for the damage, the landlord should have notified the tenant in a timely manner and given him the opportunity to fix the damage. Since the landlord failed to do so, I find that the landlord's claim for the cost of replacing the stove top and for the recovery of the filing fee must be dismissed.

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security and pet deposits.

In this case, the tenant moved out on February 28, 2014 and the landlord received the tenant's forwarding address on that same day. The landlord also received the tenant's forwarding address by registered mail on March 21, 2014, but failed to return the security deposit or file an application to keep it within 15 days of receiving the tenant's forwarding address in writing and therefore must return double the security deposit.

The landlord has in his possession \$830.00 for a security deposit. The landlord must return a total of **\$1,660.00**.

Since the tenant has proven his case, he is entitled to the recovery of the filing fee of **\$50.00**. Overall, the tenant has established a claim of **\$1,710.00**.

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,710.00**.

The landlord's application is dismissed in its entirety.

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: August 13, 2014

Residential Tenancy Branch

