



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MN MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 44, 45 and 67 as the tenant vacated prior to the end of the lease and some cleaning and damage repair was necessary;
- b) An Order to retain the security deposit pursuant to Section 38 for breach of the lease; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) A monetary order for double the security deposit; and
- e) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution. However, the landlord served their Application by registered mail and the tenant served his by facsimile. I find the tenant did not serve his application legally according to section 89 of the Act. I find the landlord's documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord asked about the timing for submission of evidence; please note in Rules 3.1, 3.14 and 3.17 of the Residential Tenancy Rules of Procedure, it states 14 days before the hearing. Nevertheless I considered the evidence as it was necessary for the hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent the lease was breached and that they are entitled to retain the security deposit for its breach and also to compensation for repairs? Are they entitled to recover the filing fee for this application?

Has the tenant proved entitlement to the return of the security deposit?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced August 1, 2013 on a fixed term lease to July 31, 2014, that rent is \$900 a month and a security deposit of \$450 was paid on July 16, 2013. The tenant's security deposit has not been refunded. He vacated May 30, 2014 and provided his forwarding address in writing on June 13, 2014. The unit was re-rented for June 1, 2014 so there was no lost rent. The landlord said he told the tenant that they would do their best to re-rent immediately and if so, would return his security deposit. However, he said there were too many showings necessary as there were smells that discouraged some persons and some repair had to be done. The tenant said he recalled only two showings.

The landlord claims the tenant has forfeited his security deposit based on a clause in the addendum to the lease which states the tenant agrees to forfeit his security deposit if he breaks his lease. The landlord's agent was very assertive in trying to convince me that we are ruled by contract law and that other arbitrators had awarded it in the past.

The landlord also claims as follows:

1. \$78.75 for cleaning the carpet. The tenant said they vacuumed it only.
2. \$36.75 to clean and disinfect the refrigerator. The tenant said his mother and a partner had cleaned it.
3. \$98.39 to patch and paint. The landlord said the paint had been touched up when the tenancy began but the tenant denies this.

In evidence is the tenancy agreement, invoices for repairs, invoice for carpet and refrigerator cleaning and a condition inspection report done at move-in and move-out.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The onus is on the applicant to prove on a balance of probabilities their claim. Contrary to the assertions of the landlord, I find the Act in section 20 (e) states a landlord must not include in a lease that the landlord automatically keeps all or part of the security deposit. Although arbitrators also consider the law of contract, I find the Act section 5 states that landlords and tenants may not avoid or contract out of the Act and any attempt to do so is of no effect. Therefore, I find the contract term in the addendum is illegal and of no effect. Furthermore, the landlord said in his evidence that he had told the tenant his deposit would be returned if the unit was re-rented right away and it was.

I find the landlord satisfied the onus of proving that they are entitled to carpet cleaning fees of \$78.75; the tenant agreed he had not steam cleaned the carpets and he had been there almost a year. According to the Residential Tenancy Policy Guidelines, a tenant may be held responsible for steam cleaning carpets if there has been smoking in the premises. I find the landlord's evidence credible that there were smells indicating smoking. While the tenant's relatives may have cleaned the refrigerator, the landlord's cleaner detected odours that required disinfecting. I find the landlord entitled to recover the cost as invoiced of \$36.75.

The landlord said the unit's paint and walls were touched up at the beginning of the tenancy; when the move-in report was pointed out to him, he said the repairs had been done after the tenant moved in. The tenant said he recalled no touch up or repairs although the blinds and closet were repaired as agreed on the report. I find there were lots of chips and marks on the move-in report but the landlord notes these as remaining the same at move-out but the report also notes marks on many other areas such as badly marked up doors, stains by the doorway into the bedroom and dents and chips in the main bathroom. Although the landlord asserted the paint was 10 months old, I find the move-in report does not support this evidence and there were many existing marks. Therefore, I find the landlord entitled to recover the cost of half of the repair and paint work as it appears at least 50% was pre-existing the tenancy.

The landlord said they were out significant costs to re-rent as they had many showings. However, the lease was due to end in two months and the parties had initialled that the tenant would give vacant possession on that date. I find the landlord would have incurred similar costs to re-rent although two months later so I find it unfair to assess this tenant the costs of re-renting. Considering he vacated two months before the end of his tenancy, the unit was re-rented immediately with no rental loss, and the landlord said the costs to re-rent were estimated at the amount of the security deposit of \$450, I find the landlord entitled to compensation of \$75 for the effort to re-rent (one sixth of \$450 for the tenant moving out two months early.)

I dismiss the tenant's application as it was not legally served on the landlord.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and I find he is not entitled to recover filing fees for his application.

I find the landlord entitled to compensation as calculated below; I find them entitled to retain a portion of the security deposit to offset the amount owing and to recover the

filing fees for this application. As there is a balance of the security deposit remaining, I find the tenant entitled to a monetary order for the balance.

Calculation of Monetary Award:

Carpet cleaning	78.75
Refrigerator clean and disinfect	36.75
Allow 50% of repair and paint work	49.19
Allow cost for showings	75.00
Filing fee for application	50.00
Less security deposit (no interest 2013-14)	-450.00
Monetary Order to Tenant.	-160.31

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 11, 2014

Residential Tenancy Branch

