



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit, for money owed or compensation under the Act and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?
Is the tenant entitled to a monetary order for money owed under the Act?

Background and Evidence

The parties entered into a tenancy agreement on April 3, 2014, with an effective tenancy start date of April 15, 2014. The parties agreed that the tenant was given possession of the rental unit earlier as the tenant requested permission of the landlord to be able to paint the kitchen, to remove the carpet in the dining room and replace it with linoleum. The tenant also wanted to clean the rental unit to her standard prior to moving in her belongings as she needed a clean environment due to health issues. The tenancy ended on April 25, 2014.

The tenant claims as follows:

a.	Return of Double the security deposit	\$1,200.00
b.	Return of rent for April 2014	\$1,200.00
c.	Filing fee	\$ 50.00
	Total claimed	\$2,450.00

Return of Double the security deposit

The parties agreed that the landlord received a letter from the tenant on April 25, 2014, ending the tenancy and seeking the return of the security deposit. The letter provided the landlord with the tenant's forwarding address.

The landlord's agent confirmed that they did not return the security deposit or make an application for dispute resolution claiming against the deposit.

Return of rent for April 2014

The testified that she seeks the return of April 2014, rent from the landlord as she did not occupy the premises and her belongings were not moved in as the premise was not suitable for living.

The tenant testified that she inspected the rental premise twice before signing her tenancy agreement. The tenant stated that she was rushed and was unable to see the poor condition of the premise at that time. The tenant stated when she later received the keys from the landlord she was appalled to see the condition of the home as there was black mold in the window sills, dog urine and feces stains on the carpet, dog excrement on a wall, dog hair on the flooring, and the bathrooms were very dirty. The tenant stated that she had hired a cleaner to come and clean the rental unit, however, the cleaner left after cleaning for four hours as the cleaner said she was not there to cleanup another tenants mess. Filed in evidence are photographs of the carpets and window sills.

The tenant testified that when the painter attended the rental unit to paint the kitchen they discovered carpenter ants in the cupboard, which she had to address the ant infestation before the painter could paint. The tenant stated that she resolved the ant problem and the kitchen walls were then painted.

The tenant testified that she is not sure if she notified that landlord of the above mentioned deficiencies.

The tenant testified that the furnace did not work and when she went down to the furnace room she discovered that the ducts leading upstairs had been cut and taped off and the furnace only heated the downstairs portion of the house. The tenant stated that she had three people in to inspect the furnace because when she notified the landlord they insisted that the furnace was working fine. Filed in evidence are photographs of the duct work.

The landlord's agent testified that the tenant was give the rental unit on April 4, 2014, rent free until April 15, 2014, as the tenant wanted the premises earlier so she could clean the premises. The agent stated that they do not agree with the tenant that there

was dog urine, and feces on the carpet or wall. The agent stated the photographs show staining of ink or from something dark being spilled on the carpet and that the photograph of the dining room carpet is the area of carpet that the tenant wanted to remove and replace with linoleum. The landlord's agent stated that they were never notified by the tenant of any cleaning issues or an ant infestation.

The landlord's agent testified that the furnace was tested the day before the tenant moved into the rental premises and was functioning fine. The agent stated that there was cut off ducts, however it is from a pre-existing wood furnace that was decommissioned in the year of 2000.

The landlord's agent testified that a new oil furnace was installed in the year of 2000 with a permit. The agent stated that the new furnace heats the entire rental premises and is inspected annually. Filed in evidence is a copy of the permit, which support the furnace was replaced in June of 2000. Filed in evidence is an invoice for the furnace showing it was serviced in April 2013. Filed in evidence is a service log.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenant has the burden of proof to prove their claim.

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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Return of Double the security deposit

In this case, there was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit.

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 issue. Therefore, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant double the security deposit (\$600.00) the sum of **\$1,200.00**.

Return of rent for April 2014

Under section 32(1) of the Act, a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Under section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Although the tenant did not move her belongings into the rental unit, I find the tenant had legal possession of the premises on April 4, 2014, when they received the keys from the landlord. I further find on the balance of probability that there was an agreement made by the parties that the tenant would clean, paint and replace the flooring as it would not be reasonable for the tenant to have possession of the rental and not pay rent prior to the effective start date in their tenancy agreement, if there was no such prior agreement.

Further, the evidence of the tenant was she is not sure if she ever notified the landlord that a problem existed. A landlord cannot be held responsible unless notified by the tenant that a problem exists. Therefore, I find the tenant has failed to prove the landlord has breached section 32(1) of the Act.

In this case, the letter ending the tenancy dated April 24, 2014, filed as evidence alleged there was inadequate heat. Each party has provided a different version of events. The evidence of the landlord was the furnace was working at the start of the tenancy and that the furnace and ducts were installed with a permit in the year 2000. The landlord's version is support by documentary evidence, the permit of installation, a service invoice, and a maintenance log for the furnace. The evidence of the tenant was that the furnace was not working and there were no ducts leading to the upper portion of the house. The evidence of the tenant was that she had three people inspect the furnace.

Although the tenant has provided photographs of ducts that have been cut off and taped, I find it is just a likely that they are from the pre-existing wood furnace which was decommissioned in the year 2000. The tenant has not provided any other documentary evidence, such as witness statements. Therefore, I find the tenant has failed to prove the landlord has breached section 32(1) of the Act.

In light of the above, I find the tenant is not entitled to the return of rent that was paid for April 2014. Therefore, I dismiss this portion of the tenant's claim.

I find that the tenant has established a total monetary claim of **\$1,250.00** comprised of the above described amount and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order in the above amount.

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: October 14, 2014

Residential Tenancy Branch

