



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant, filed under the Residential Tenancy Act, (the “Act”), for a monetary order for double the return of the security deposit and pet damage deposit (the Deposits”), and for money owed or compensation for damage or loss under the Act.

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.

Although the tenant filed their evidence on January 29, 2015, that did not comply with the Residential Tenancy Rules of Procedures, rule 2.5 as copies of all other documentary and digital evidence to be relied on at the hearing were to be submitted with their application to the extent possible. I have reviewed the evidence and this evidence was available to the tenants at that time to produce. However, the landlord had no objection of its review.

Issues to be Decided

Is the tenant entitled to double the Deposits?

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy, which began on March 1, 2014 and was to expire on August 31, 2014. Rent in the amount of \$1,150.00 was

payable on the first of each month. The tenant paid a security deposit of \$575.00 and a pet damage deposit of \$575.00. The tenancy ended on July 31, 2014.

a.	Double the security and pet damage deposit	\$ 2,300.00
b.	Return 25% of rent for May, June and July 2014	\$ 862.50
c.	Filing fee	\$ 50.00
	Total claimed	\$ 3,212.50

Double the security and pet damage deposit

The tenant testified that they provided to the landlord by email on June 25, 2014 with a notice to end tenancy and in that notice was her forwarding address. The tenant stated that the landlord received that email as they responded that you could move out anytime.

The landlord acknowledged that they received the tenant's forwarding address. The landlord stated that they were not aware that the tenant expected their Deposits back as they had breached the fixed term agreement. The landlord confirmed they did not file an application for dispute to retain any portion of the Deposits.

25% of rent return for May, June and July

The tenant testified that although they had full use of their bathroom, they seek to recover 25% of the rent that they paid for loss of enjoyment of the property. The tenant stated that they discovered that there was a mould issue in the bathroom as water was running down the back of the wall to the shower base. The tenant stated that they notified the landlord of the problem on May 7, 2014, however, the landlord did not have a plumber attend until June 3, 2014. The tenant stated that the landlord never addressed the mould issue that continued to be an issue and they have asthma and are allergic to mould they ended their tenancy. Filed in evidence are photographs of the shower.

Filed in evidence are text messages between the parties. The text message dated May 7, 2014, sent by the tenant reads in part,

"I noticed a few weeks earlier that the shower was wet around it on the wood, and closer inspection showed the water was actually running down the back of the wall to the shower base"... "so it explains why the shower floor feels rotten and there is black mold growing in every corner and along the base of the shower"...

[Reproduced as written]

A text message sent by the tenant later on May 7, 2014, reads in part

“[name] fixed the shower head a bit, the leak is not as bad as it was because he retaped it with Teflone tape”.

[Reproduced as written]

The landlord testified that as soon as they were informed by the tenant of the water leak they contacted a plumber. The landlord stated that the plumber was to go to the rental unit immediately to make the necessary repair; however, they discovered later in the month that the plumber did not attend. The landlord stated that they contacted the plumber again and on June 3, 2014, the necessary repair was made. The landlord stated that they did not hear any further concerns from the tenant until they received the notice to end the tenancy on June 25, 2014.

The landlord testified that after the tenant vacated the rental unit the spots where the water leaked on to the wood was easily cleaned and it was not necessary to make any repairs to the wood.

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.

Double the security and pet damage deposit

Although the tenant ended the tenancy prior to the fixed term agreement there was no evidence to show that the tenant had agreed that the landlord could retain any portion of the Deposits.

Under section 38 of the Act, the landlord must within 15 days after the tenancy ending or from when they receive the tenant forwarding address, whichever is the later, must do one of the following repay the Deposits or make an application for dispute resolution claiming against the Deposits.

In this case, the landlords did not make an application to retain any of the Deposits. The landlords have breached section 38 of the Act. The Deposits are held in trust for the tenant by the landlords. At no time do the landlords have the ability to simply keep the Deposits because they feel they are entitled to it or are justified to keep it.

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

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 Deposits. 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 landlords pay the tenant the sum of **\$2,300.00**, comprised of double the pet damage deposit (\$575.00) and security deposit (\$575.00) on the original amounts held.

25% of rent return for May, June and July

In this case, the tenant seeks compensation for the loss enjoyment of the bathroom due to a mould issue from the shower leaking. The tenant has submitted photographs, which show the base of the wall wet, I cannot determine by the photographs that there was any mould present, even after the photographs have been enlarged as it simply looks like wet wood which would be expected. Further, there was no evidence from a mould expert to support that any mould existed or that it was black toxic mould.

I accept there was a leak in the shower; it appears that the leak was minor because if the leak was as severe as alleged by the tenant it would not have been reasonable for the tenants to wait three weeks before notifying the landlord that a problem existed.

Although there was a short delay of approximately three weeks to have the leak repaired, I find this was not unreasonable in the circumstance, as it took the tenant three weeks to notify the landlord of the problem and at that time the tenant had indicated that they had reduced the leak by applying Teflon tape. There was no evidence that this was an emergency that required immediate attention.

Further, I have reviewed the tenant's text messages and the correspondence, there is nothing in any of these documents to indicate any loss of use or loss of enjoyment of the bathroom or that they were experiencing any health concerns due to the alleged mould. I find it would have been reasonable for the tenant to notify the landlord if they were experiencing any issues, especially health concerns at the time.

Based on the above, I find the tenant has failed to prove a violation of the Act by the landlords or that a loss existed. Therefore, I dismiss this portion of the tenant's claim.

I find that the tenant has established a total monetary claim of **\$2,350.00** comprised of the above-described amount and the \$50.00 fee paid for this application. I grant the tenant a formal order under section 67 of the Act.

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 for 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: March 13, 2015

Residential Tenancy Branch

