



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for loss of rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

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 landlord entitled to a monetary order for unpaid rent?

Is either party entitled to the security deposit?

Background and Evidence

The parties agreed the tenancy commenced March 2012. Rent in the amount of \$780.00 was payable on the first of each month. A security deposit of \$390.00 was paid by the tenant. The tenancy ended on August 31, 2014.

The parties agreed a move-in condition inspection report and a move-out condition inspection report was completed. The parties agreed the tenant provided the landlord with their forwarding address on the report when they vacated the rental premise on August 31, 2014.

Landlord's application

The landlord claims as follows:

a.	Loss of rent for September 2014	\$780.00
b.	Damages	\$168.00
c.	Filing fee	\$ 50.00
	Total claimed	\$998.00

Loss of rent for September 2014

The landlord's agent testified that the tenant gave notice to end the tenancy on August 14, 2014, with an effective vacancy date of August 31, 2014. The agent stated that the tenant did not give sufficient notice and they were unable to find a new renter for September 2014.

The landlord's agent testified that they placed advertisement on popular local websites, but were unable to find a new renter until November 2014. The landlord seeks to recover loss of rent to the date the tenant could have legally ended the tenancy.

The tenant testified that when they paid rent at the beginning of August 2014, they verbally told the landlord that they might be moving. The tenant confirmed that they did not give written notice to end the tenancy until August 14, 2014, with an effective date of August 31, 2014.

Damages

The landlord's agent testified that at the end of the tenancy the tenant did not replace the four burnt out light bulbs. The agent stated that they had to pay to have someone attend to replace the bulbs. The landlord seeks to recover the amount of \$50.00.

The landlord's agent testified that the tenant broke the window lock. The agent stated that the tenant must have broken the lock when they were opening or closing the window. The landlord seeks to recover the cost to repair the broken lock in the amount of \$30.00.

The landlord's agent testified that the tenant did not leave the rental unit clean as they had to pay to have the cabinets, refrigerator, floors, bathtub, toilet, ceiling fan, and a stain under the washer and dryer cleaned. The landlord seeks to recover the amount of \$80.00.

The tenant testified that they do not deny that there were four light bulbs burnt out. The tenant stated that during their tenancy they request from the landlord a ladder; however, the landlord failed to provided one to them. The tenant stated that the ceiling was approximately 8 to 9 feet high.

The tenant testified that the window lock was not broken. The tenant stated there is a secondary lock to add extra protection that is a sliding part, which was not broken. The tenant stated that they believe this was added to the move-out condition inspection after it was signed.

The tenant testified that they left the rental unit clean. The tenant stated that on the move-out condition inspection the landlord would write did not clean well. The tenant stated that they believe the landlord wanted them to clean to a higher standard than what was required.

Tenant's application

The tenant testified that they paid a security deposit of \$390.00. The tenant vacated the premises on August 31, 2014. The tenant provided the landlord with a written notice of the forwarding address when they completed the move-out inspection.

The tenant testified the landlord did not return the security deposit or make an application claiming against the deposit within 15 days.

The landlord's agent acknowledged that they had the tenants forwarding address on August 31, 2014. The agent acknowledged they did not file an application to retain the security deposit or return the deposit with 15 days.

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, both parties have the burden of proof to prove their respective claim.

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.

Loss of rent for September 2014

Section 45 of the Residential Tenancy Act states:

*45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
(a) is not earlier than one month after the date the landlord receives the notice, and*

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

The parties agreed that the tenant gave the landlord written notice to end the tenancy on August 14, 2014, to end the tenancy effective August 31, 2014. Under section 45 of the Act the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant has breached section 45 of the Act as the earliest date they could have legally ended the tenancy was September 30, 2014.

As a result of the breach, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

In this case, the evidence of the landlord's agent was they place advertisements on popular websites; however, due to short notice was unable to find a new renter for September 2014. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for September 2014, in the amount of **\$780.00**.

Damages

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises, the tenant is expected to replace the burnt out light bulbs during the tenancy.

Although the evidence of the tenant was that they requested a ladder from the landlord which was not provided and they were unable to replace the burnt out light bulbs during the tenancy. There is no requirement under the Act that the landlord must provide a ladder to the tenant.

In this case, the ceilings in the rental unit were described to be the standard height. It is the tenant responsible to be able to make their own arrangements to replace the light bulbs when necessary. I find the tenant has breached the Act, when they failed replace

the burnt out light bulbs. Therefore, I find the landlord is entitled to recover the amount they paid to have new light bulbs installed in the amount of **\$50.00**.

The landlord is seeking compensation for a broken window lock. The tenant alleged the move-out condition inspection report has been altered. As neither party placed initials where items have been crossed off and changed there is no way for me to determine if changes have been made.

Further, even if I accept the lock was broken, there is no evidence that the lock was broken do the tenant's action or neglect as the lock simply could have broken for normal wear and tear when the window was opened or closed. I find the landlord has failed to provide sufficient evidence to support the lock was broke due to the tenant's actions. Therefore, I dismiss this portion of the landlord's claim.

The landlord is seeking compensation for cleaning. Under the Act, the tenant is required to leave the rental unit reasonable clean. Although the move-out condition inspection indicated some items were left dirty, such as the bathtub. The report also indicates some items were not cleaned well, such as the sink. I note the tenant did not agree or disagree with the report as this portion of the move-out inspection report was not completed.

In this case, the issue for me to determine is whether or not the rental unit was left reasonable cleaned by the tenant. I find the landlord has failed to provide sufficient evidence, as no photographic evidence was submitted for my consideration. I find the landlord has failed to prove the tenant did not leave the rental unit reasonable cleaned. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$880.00** comprised of the above described amount and the \$50.00 fee paid for this application.

The above describe amount may be offset with the tenant's application at the end of my decision.

Tenant's application

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[My emphasis added.]

The landlord received the tenant's forwarding address on August 31, 2014, which was the last day of the tenancy.

Although the landlord filed an application for dispute resolution claiming against the deposit it was not filed within the required timeframe permitted under the Act, as their last day to claim against the security deposit was on September 15, 2014, and their application was not filed until October 24, 2014.

I find the landlord has breached 38(1) 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.

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 of the Act, that the landlord pays the tenant the sum of **\$830.00**, comprised of double the security deposit (\$390.00) on the original amount held and to recover the \$50.00 fee for filing this Application.

As both parties have received monetary awards, I find it appropriate to offset these amounts from their respective awards. The tenant received a monetary award of \$830.00, that award will be offset from the landlord's monetary award of \$880.00,

leaving a balance owed, by the tenant, to the landlord in the amount of \$50.00. The landlord is granted a formal order pursuant to section 67 of the Act.

Should the tenant fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

Conclusion

The landlord's application for a monetary order was granted. The tenant's application for a monetary order was granted. Both monetary awards were offset from each other. The landlord was granted a formal order for the balance due, by the tenant.

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: April 23, 2015

Residential Tenancy Branch

