



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 applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for loss of income, cost of repairs and cleaning, for the filing fee and to keep the security deposit in satisfaction of her claim. 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 keep the security deposit in partial satisfaction of her claim for loss of income, repairs and the filing fee? Is the tenant entitled to the return of double the security deposit and the filing fee?

Background and Evidence

The tenancy started on April 01, 2013 and ended on August 30, 2014. The monthly rent was \$1,600.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$800.00.

The tenant testified that on August 03, 2014, she gave the landlord notice to end the tenancy by way of a text message, with an effective date of August 31, 2014. The landlord started looking for a tenant and found one who moved in on September 06, 2014. The landlord is claiming a loss of income for the first five days of September due to the inadequate notice to end the tenancy.

The tenant also testified that the garburator stopped working sometime during the tenancy but she only informed the landlord just prior to the end of tenancy.

Both parties conducted move in and move out inspections but neither inspection was documented. The tenant testified that the landlord did not find or point out any problems to the tenant and even agreed to return the deposit with a deduction of \$15.00. Since both parties had agreed to a \$15.00 deduction, the landlord wrote a cheque to the tenant. The tenant stated that the landlord later put a stop payment on the cheque and she was unable to cash it.

The landlord testified that upon further inspection the next day, she found several problems and had to hire a repair man. The landlord provided photographs and invoices to support her testimony. The landlord also stated that there was dog faeces in the balcony and filed a photograph. The landlord is also claiming the cost of cleaning in the amount of 110.00.

The landlord stated that the next day after the tenant moved out, her husband took apart the garburator in an attempt to fix it. He found a ball of steel wool inside. The motor had burnt out and needed to be replaced. The landlord is claiming \$191.06 and has provided a receipt as proof of payment.

The tenant provided the landlord with her forwarding address in writing on September 10, 2014. The landlord made this application in a timely manner on September 16, 2014. The tenant is claiming the return of double the security deposit and the filing fee.

Analysis

Landlord's application:

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. Rent is payable on the first of each month and the tenant gave notice to end the tenancy on August 03, 2014 with an effective date of August 31, 2014

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case the tenant did not give the landlord adequate notice to end the tenancy.

Despite the landlord's efforts to mitigate her losses, she suffered a loss of income for the first five days of September 2014. Accordingly, I find that the landlord is entitled to \$266.67 which is the prorated rent for five days.

In this case, the landlord did not document the move in and move out inspections. During the move out inspection, the landlord did not notify the tenant of any deductions to be made off the security deposit other than \$15.00. The landlord further provided the tenant with a cheque for \$785.00 for the return of the security deposit.

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.

Since the landlord did not find any damage during the move out inspection and returned the security deposit to the tenant, I find that I must dismiss the landlord's claim for repairs for damage identified after the move out inspection.

However, I find that the landlord has proven that the tenant left dog feces on the balcony and therefore I award the landlord her claim of \$110.00 for cleaning.

During the hearing, the tenant agreed that the garburator had stopped working during the tenancy but she did not report it to the landlord until the end of tenancy. Based on the landlord's testimony, I find on a balance of probabilities that it is more likely than not that the motor burnt out due to the presence of steel wool that was dropped inside. Accordingly, I find that the tenant was negligent and caused the garburator to break down. Since the garburator is approximately 10 years old, I award the landlord \$90.00 which is approximately half the cost of replacing the appliance.

Overall the landlord has established a claim as follows:

1.	Loss of income	\$266.67
2.	Cleaning	\$110.00
3.	Replace garburator	\$90.00
	Total	\$466.67

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 deposit.

In this case, the tenant provided her forwarding address on September 10, 2014 and the landlord made this application on September 16, 2014 which is within the legislated time frame of 15 days. Therefore the tenant is not entitled to the return of double the security deposit but is entitled to the return of the base amount of \$800.00.

The tenant had already agreed to a deduction of \$15.00 and therefore the tenant is entitled to \$785.00.

Since both parties have been partially successful in their claims, they must bear the cost of filing their own applications

The landlord has established a claim of \$466.67 while the tenant has established a claim of \$785.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$318.33, which consists of the difference between the established claims of both parties. 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 for \$318.33

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 14, 2015

Residential Tenancy Branch

