



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, FF
 Tenant: MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders. The hearing was conducted via teleconference and was attended by the landlord and the tenant.

In the landlord's original Application for Dispute Resolution, submitted on November 5, 2015, she sought a monetary order in the amount of \$275.00. The following day the landlord submitted her evidence and in her documentation she sought to amend her Application to increase her claim to \$500.00.

Amendments must be made on the original Application for Dispute Resolution and cannot be submitted through an evidence package. As the landlord did not submit an amended Application for Dispute Resolution I cannot accept the landlord's request to amend her claim.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage to the rental unit; for all or part of the security and pet damage deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for return of the balance of the pet damage deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on April 1, 2013 as a 1 year fixed term tenancy that converted to a month to month tenancy on April 1, 2014 for the monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00 and a pet damage deposit of \$250.00 paid. The tenancy ended on August 31, 2014.

The tenant submits that he provided the landlord with his forwarding address on the move out condition inspection report that was completed on August 31, 2014. The landlord did not dispute this statement. The parties agree the landlord provided the tenant a cheque dated September 15, 2014 in the amount of \$675.00 that represented the return of the full security deposit and \$125.00 of the pet damage deposit.

The landlord submitted that the tenancy agreement indicated that the pet damage deposit was not refundable but that she returned a portion of it to the tenants anyway.

The landlord submits that she seeks compensation in the amount of \$275.00 for the following items:

1. The tenancy agreement stipulated that the landlord would cover $\frac{1}{4}$ of the monthly costs for hydro if the tenants kept the rental unit in good condition during the tenancy. The landlord states that every time she went over to the unit it was not clean and that things were all over the floor. The landlord did not provide a copy of any agreement outlining such an arrangement and she did not provide any evidence of the condition of the rental unit during the tenancy;
2. The landlord submits that the tenants had left holes in the walls at the end of the tenancy and that she had attempted to repair the holes herself but that it was not good enough so she had to hire someone to complete these repairs. The tenant submits that he had offered to repair these items but the landlord rejected the offer;
3. The landlord submits she had agreed for the tenants to install a tile backsplash in the kitchen but that the tenants did not complete the work and as such she seeks compensation for the incomplete work;
4. The landlord submits that the carpets and rental unit required cleaning in part because of the tenant's pet. The tenant submits that he had had the carpets upstairs cleaned and extensively vacuumed the main floor carpets.

While the landlord did submit several emails between the parties discussing the condition of the rental unit during the months of July and August 2014 she did not submit any evidence confirming the condition of the rental unit at the start or end of the tenancy. The landlord did submit one receipt from a hardware store in the amount of \$43.64 for drywall patch material and silicone.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security and pet damage deposits or file an Application for Dispute Resolution to claim against the security or pet damage deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the landlord did return the tenant's full security deposit by cheque dated September 15, 2014 I find that the landlord comply with the requirements under Section 38(1) in regard to the security deposit.

However, in regard to the pet damage deposit I note that Section 20(e) of the *Act* specifically prohibits a landlord from including a term in a tenancy agreement that the landlord automatically keeps all or part of the pet damage deposit at the end of the tenancy.

Further, from the tenant's undisputed testimony that he provided his forwarding address to the landlord on August 31, 2014 I find the landlord had until September 15, 2014 to either return the pet damage deposit in full or file an Application for Dispute Resolution claiming against the pet damage deposit to be compliant with Section 38(1).

As noted above, the landlord submitted her Application for Dispute Resolution on November 5, 2014. As such, I find the landlord has failed to comply with the requirements under Section 38(1) and the tenant is entitled to double the amount of the pet damage deposit. As the deposit was \$250.00 I note the tenant is entitled to \$500.00 less the amount of \$125.00 already received or \$350.00.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In order to establish that the tenant has failed to comply with Section 37 burden is on the landlord to provide sufficient evidence to establish that tenant has not complied. As the landlord has submitted no documentary evidence confirming the condition at the start or end of the tenancy I must rely on the verbal testimony of both parties.

When verbal testimony from both parties provides differing probable versions of the condition of the unit the party must provide additional evidence to establish the non-compliance with Section 37.

From the testimony of both parties I accept that the tenants had not repaired holes in some walls, however, I also find that when the landlord declined the tenant's offer to

repair the holes she failed in her obligation to mitigate the damage or loss and as such she is not entitled to compensation for these repairs.

As the tenant disputes that the carpets had not been cleaned and the landlord has provided no additional evidence to corroborate her position that the carpets required cleaning I find she has failed to establish non-compliance with Section 37. I therefore find she is not entitled to any compensation for this cleaning.

In regard to the kitchen backsplash, I agree with the landlord that as she had agreed to allow the tenants to install the backsplash they were not required to remove it at the end of the tenancy. Furthermore the landlord has provided no evidence to show that the work was incomplete. As such, I find the landlord is not entitled to any compensation for the backsplash.

And finally, as the landlord has not provided a copy of any agreement regarding hydro reductions or any evidence to confirm that the tenant did not comply with the agreement during the tenancy in order to receive the reduction I find the landlord has failed to establish she has suffered any loss.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety without leave to reapply.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$350.00** comprised of double the pet damage deposit less the amount already received.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 21, 2015

Residential Tenancy Branch

