



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Although both parties initially testified that they were not intending to call witnesses, the tenant advised during the course of this hearing that she had just learned that the person who lived below her during the course of her tenancy was available to give sworn testimony.

The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package and written evidence package, both sent by registered mail. I am satisfied that the tenant was duly served with both of these packages in accordance with sections 88 and 89(1) of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord entered into written evidence a short document signed by both the landlord and the tenant on February 7, 2013 for the tenant's seven-month rental of the rental unit for the period from March 1, 2013 until September 30, 2013. Monthly rent according to this document was set at \$1,350.00. The landlord continues to hold the \$675.00 security deposit paid on February 15, 2013. Although this document was by no means a standard Residential Tenancy Agreement, it did contain enough of the critical features of a tenancy agreement to establish that this tenancy was established under the *Act*.

The landlord did not dispute the tenant's claim at this hearing that she moved into this main floor rental unit on February 15, 2013. The tenancy continued as a periodic tenancy after the expiration of the initial seven-month agreement until the landlord ended the tenancy on the basis of a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice). Although the effective date of the landlord's 2 Month Notice was September 30, 2014, the tenant said that she vacated the rental unit a few days before that date. The landlord's relatives moved into the rental unit shortly thereafter.

The tenant testified that she handed the landlord's daughter-in-law who was by then living in the rental property her forwarding address. She was not sure when this occurred. The landlord gave sworn testimony and written evidence that he did not receive the tenant's forwarding address from the tenant. He said that a tenant in the rental property, presumably his daughter-in-law gave him the tenant's forwarding address some time after this tenancy ended.

The landlord's application for a monetary award of \$754.00 included the following items:

Item	Amount
Repairs to Bathtub, Sink and Hinges on Door	\$157.00
Replacement of Damaged Window	133.00
Extra Cleaning Expenses	144.00
Repair To Gyproc in Ceiling of Basement Suite	277.60
Damage to Driveway	80.00
Scratches on Floor	50.00
Recovery of Filing Fee for this Application	50.00
Total of Above Items	\$891.60

The landlord provided receipts for most of the items cited above, with the exception of the oil damage to the driveway caused by the tenant's vehicle and the scratches to the floor. The landlord testified that he has not undertaken any repairs to the driveway or the floor in question.

At the hearing, the landlord gave sworn testimony supported by a written receipt that he had to hire a handyman to repair hinges and the latch to the door of the master bedroom and to recaulk the bathtub. He asserted that the tenant was responsible for this damage and a leak in the kitchen sink. At the hearing, he said that the tenant might not be responsible for the repair to the kitchen sink, although he observed that she was "physically abusive" to the premises and continued to treat the rental unit roughly during her tenancy.

The landlord also supplied a receipt for the repair of a small bedroom window. He testified that either the tenant, or her male friend or husband told him that the tenant's male friend or husband broke this window when he tried to open it. Upon questioning, he agreed that the

previous tenant had encountered problems with this same window; however, he had undertaken repairs.

The landlord testified that the tenant left the rental unit in unusually dirty condition, requiring his hiring a cleaning person for five hours at a rate of \$25.00 per hour. He entered into written evidence a handwritten receipt for this expenditure. He also supplied a written statement from the tenant who moved into the rental unit after the tenant attesting to the condition of the rental unit at the end of this tenancy. The tenant gave undisputed sworn testimony that this new tenant was actually the landlord's daughter-in-law who occupied the rental unit after the landlord's issuance of the 2 Month Notice.

The landlord also entered into written evidence a handwritten statement from the person who repaired the ceiling in the basement suite after water damage flowed into that suite from the tenant's rental unit. The landlord maintained that the tenant's babysitter and her brother moved into the rental unit along with the tenant and the tenant's three children without the landlord's permission. The landlord alleged that the unauthorized occupants of the rental unit operated the major appliances in such a way as to cause two episodes of flooding, the last of which required the repair of the gyproc and ceiling in the basement suite. This handwritten statement referred to information provided to the repair person by the tenants then living in the basement suite. The landlord also entered into written evidence a statement by one of these basement tenants, Witness JH, confirming that the damage to her ceiling was caused by leakage from the tenant's rental unit in September 2013 and in February 2014.

At the hearing, the tenant called Witness JH to give sworn testimony. Witness JH confirmed that she moved into the rental unit below the tenant at roughly the same time as did the tenant, and left about the same time. Witness JH testified that she was aware that there had been leaks from the rental unit above her when the previous tenant was living in the rental unit as well as the two occasions cited in her statement. She said that the rental property was "rundown" and never in good repair. She testified that whenever the landlord did undertake repairs he employed used materials for the repairs. She testified that the tenant's rental unit was left in better condition than when the tenant first occupied the rental unit. However, Witness JH could not answer the specific questions raised by the landlord about her recollection of aspects of the tenant's rental unit at the time this tenancy began.

The landlord said that he identified the oil stain damage to the driveway, damage to the floor, a partially broken handle on the stove, and stove top replacements as well as other damage to the rental property to demonstrate that he had not claimed for all of the damage that occurred during this tenancy. Although he gave estimates for the oil damage to the driveway and the floor scratches, he has not undertaken and repairs.

For her part, the tenant testified that the rental unit was not at all up to standard when she moved into the rental unit. She said that the pane in the window referred to in the landlord's claim was broken throughout her tenancy. She testified that caulking around windows was

faulty and that she had to install taps in the bathroom herself. She also said that one of the doors had to be left open and she undertook minor repairs to many of the features of this rental unit while she lived there. She testified that she spent three hours cleaning and mopping the rental unit before she ended her tenancy. She said that she did her best to keep the suite clean and had taken photographs to show the condition of the rental unit at the end of this tenancy. She did not enter these photographs into evidence. She testified that she left the suite “very clean and tidy at the end of the tenancy.” The tenant said that the dishwasher and washing machine could only be operated if they were stopped 20 minutes into each cycle because the plumbing was insufficient to cope with the outflow from those appliances.

After hearing sworn testimony from the tenant and Witness JH, the landlord stated that he had repaired all of the damage caused from the previous tenancy before the tenant moved into this rental unit. He said that all of the damage claimed in his application resulted from actions taken by the tenant, her male friend or husband, her children or the tenant’s babysitter or the babysitter’s brother.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous documents and receipts provided by the landlord, and the testimony of the parties and the witness, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord’s claim and my findings around each are set out below.

Analysis – Damage Claim

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in and move-out condition inspections and inspection reports are very helpful. In this case, it would appear that the only joint inspection conducted was when the tenant first viewed the premises. The landlord did not issue a joint move-in condition inspection report and did not produce his own move-out condition inspection report after the tenant vacated the rental unit. The landlord did not take any photographs of the condition of the rental unit either before or after this tenancy. Although the landlord entered into written evidence statements attributed to some of the individuals who either performed work on the rental unit or lived in this building, the only witness who appeared for either side was Witness JH, who was called by the tenant as a witness, even though the landlord supplied written evidence signed by her. While her testimony was not very detailed or specific, she did state emphatically that the tenant had improved the condition of the rental unit during the course of her tenancy and left the rental unit in better

condition than she found it when she started her tenancy. This essentially confirmed the tenant's sworn testimony in this regard.

I find that the landlord did not follow the requirements of the *Act* regarding the preparation of joint move-in and move-out condition inspections and inspection reports, and provided no photographic evidence to support his claim for damage. Rather, the landlord has relied primarily on written statements from individuals who he did not call as witnesses and his own sworn testimony and written statements for his claim. Under such circumstances, the landlord had little concrete evidence to dispute the tenant's claim and that of Witness JH that the rental unit was not in good condition at the beginning of this tenancy and that the damage claimed by the landlord existed before her tenancy started.

Under such circumstances, I find on a balance of probabilities that the landlord has not met the burden of proof required to entitle him to much of the monetary claim for damage he was seeking. He admitted that the tenant might not be responsible for damage to the sink, and I find the remainder of the landlord's claim for repairs to the bathtub and doors could easily have resulted from reasonable wear and tear. The landlord has not adequately responded to the tenant's assertion that the landlord's previous repairs to windows, plumbing and appliances only allowed certain types of use of these facilities and services. In general, I find that much of the landlord's claim for damage arose from reasonable wear and tear that had accumulated, likely over a number of tenancies and years.

Without more information or better information regarding the previous flooding incidents that had damaged the ceiling of the basement rental suite, the landlord has not proven on a balance of probabilities that the repairs to the gyproc and the ceiling of the basement suite arose solely because of the tenant's actions or those of other occupants in the rental unit. However, I do accept that the tenant is at least partially responsible for the flooding incidents which prompted the landlord's most recent repairs to the gyproc and ceiling of the basements suite. These incidents clearly occurred during this tenancy and the tenant remains partially responsible for damage that may have been caused by occupants who were using the major appliances without following the proper instructions for their use. Under these circumstances, I find sufficient evidence to find both the landlord and the tenant share in the responsibility for the flooding damage. As such, I allow one-half of the landlord's claim for his cost of repairing the gyproc and ceiling of the basement suite below the tenant. This leads to a monetary award of \$138.80 to the landlord for these repair costs ($\$277.60 \times 50\% = \138.80).

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. The tenant and her witness maintained that the tenant left the rental unit in better condition than when she moved into the rental in February 2013.

While I dismiss most of the landlord's claim on the basis that he has not met his burden of proof with his series of handwritten receipts and statements, I find on a balance of probabilities that the tenant did not fully comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean." I find that some cleaning was likely required by the landlord after the tenant vacated the rental unit. For that reason, I find that the landlord is entitled to a monetary award of \$131.25, to recover the actual amount the landlord spent on general cleaning that was required at the end of this tenancy.

As the landlord has been partially successful in his application, I allow him to recover his \$50.00 filing fee from the tenant.

Analysis – Security Deposit

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

In this case, the tenant claimed that no actual joint move-in condition inspection occurred. While the landlord testified that the parties did undertake a joint move-in condition inspection at the time the tenant first viewed the premises and agreed to rent the unit, he said that he did not create a report of that inspection, a requirement of section 23(4) and (5) of the *Act*. Paragraph 24(2)(c) of the *Act* reads in part as follows:

24 (2) *The right of a landlord to claim against a security deposit...for damage to residential property is extinguished if the landlord*

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy **or** the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;...*
- *whether or not the landlord may have a valid monetary claim.*

In this case, I am not satisfied that the tenant has proven that she provided her forwarding address to the landlord in writing. Even though the landlord's right to claim against the tenant's security deposit had been extinguished through the landlord's failure to create a joint move-in condition inspection report, I find that the landlord's obligation to return the security deposit has not yet been triggered. For these reasons, I find that the landlord is responsible for returning only that portion of the security deposit that remains after deductions for damage and the filing fee for this application are applied against the tenant's security deposit. No interest applies over this period.

Conclusion

I order the landlord to return the \$354.95 remainder of the tenant's security deposit after the landlord's awards to recover damage and his filing fee are deducted from that deposit. This amount is calculated based on the following terms and must be returned to the tenant forthwith:

Item	Amount
Extra Cleaning Expenses	\$131.25
Repair To Gyproc in Ceiling of Basement Suite	138.80
Less Security Deposit	-675.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	(\$354.95)

In the event that the landlord does not comply with this order, the tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 03, 2015

