



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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's agent.

The tenant's agent submitted a written document dated July 16, 2015, 1 day after the hearing. As this document was not submitted prior to the hearing and it was not requested by me during the hearing, I have not considered any of the content of the document in this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit and residential property; for all or part of the security and pet damage deposits 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 security and pet damage deposits and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on February 2, 2014 for a 9 month fixed term tenancy beginning on February 1, 2014 that converted to a month to month tenancy on November 1, 2014 for the monthly rent of \$890.00 due on the 1st of each month with a security deposit of \$445.00 paid.

The tenant's agent submitted that the tenant also paid a pet damage deposit of \$200.00 because the tenant had a cat. The landlord testified that he usually does require a pet damage deposit of \$200.00 but he could not recall if this tenant paid the deposit or not.

The tenant seeks return of both the security deposit and the pet damage deposit.

The landlord seeks compensation in the amount of \$1,200.00 for damage to two other rental units the landlord claims is a result of flood caused by the tenant in this rental unit and for cleaning of this rental unit. The landlord has submitted invoices for repairs to unit 207 in the amount of \$960.00; repairs to units 307 and 109 in the amount of \$720.00; and cleaning of unit 307 (a one bedroom apartment) in the amount of \$700.00.

While these invoices total \$2,380.00 the landlord did not explain why he was not claiming the full amount of the costs to repair any damage he has attributed to the tenant or for cleaning.

The parties agree the landlord conducted a move out condition inspection on November 30, 2014 and that the tenant signed the section of the Condition Inspection Report allowing the landlord to certain deductions from the security and pet damage deposits. I note the tenant did not sign the section of the Report agree or disagreeing with the condition of the rental unit.

The section of the Report that was signed states "I [tenant name] agree to the following deductions from my security and/or pet damage deposit" the document then states "Security deposit _____ Pet Damage Deposit _____" in a handwritten notation the landlord has written "carpet shampooing, stove (something illegible), damaged 2 apartments below and closet doors."

The tenant's agent testified the tenant provided the landlord with his forwarding address during the move out inspection. I note that the forwarding address is written on the Condition Inspection Report.

The landlord submits that in September the tenant attempted to make some repairs to the plumbing in the bathroom and it caused a flood which damaged two rental units below the dispute rental unit. The landlord has provided no evidence from a plumber confirming what caused the flood. The landlord has also not provided any evidence to confirm what damage occurred to either this rental unit or any other rental unit.

The landlord testified that he had not spoken to the tenant to advise him of the flood and he did not issue a notice to end the tenancy for cause because the tenant had given his notice at the end of October that he would be moving out by the end of November. The landlord did not explain why he never even mentioned the flood to the tenant.

The tenant's agent submitted that the tenant was out of the country in September 2014 at the time the landlord asserts the tenant attempted to make some plumbing repairs which caused the flood.

The landlord also submits that the rental unit required additional cleaning and has submitted a document that stated the following charges that included cleaning the fridge, stove (and behind them); cleaning (\$150.00); the bathtub; toilet; bathroom cabinets, mirror (\$150.00); windows; sliding door glass, the ledges (\$150.00); kitchen floors, bathroom floors, living room floors, dining room floors (\$100.00); and kitchen and bathroom cabinets and closets (\$150.00).

I note this document is undated and it does not indicate that this it is an estimate; an invoice or a receipt.

The tenant's agent testified that the tenant had cleaned the rental unit at the end of the tenancy and does not believe the rental unit required any cleaning. She stated that even if it did require some cleaning she does not believe the amount claimed by the landlord (\$700.00) for cleaning a small 1 bedroom apartment is reasonable.

Analysis

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 regard to the landlord's claim for damage to the rental units below the dispute address I find the landlord has failed to provide any evidence to confirm the tenant attempted to make any repairs to his plumbing or that the tenant was responsible for any plumbing leaks.

Even if the landlord could establish that tenant was responsible for causing the flooding he has provided no evidence at all to confirm that there was damage to the rental units below the tenant or anywhere else on the residential property.

As such, I find the landlord has failed to establish that he has suffered a loss or that any loss resulted from a violation, by the tenant, of the *Act*, regulation or tenancy agreement.

Since the tenant did not sign the section of the Condition Inspection Report stating that he agrees with or disagrees with the condition of the rental unit I find the landlord cannot rely solely on this document as a complete record of the condition of the rental unit at the end of the tenancy. I note the landlord has provided no other record, such as photographs, to confirm the condition.

Further, as the burden of proof is on the landlord to provide evidence to establish his claim and as the tenant's agent disputes the condition of the unit, in regard to cleanliness I find the landlord has provided insufficient evidence to establish his claim. As such, I dismiss this portion of the landlord's claim.

As to the tenant's claim for return of a pet damage deposit and since the landlord's normal practice is to charge \$200.00 for a pet damage deposit and he cannot either confirm or deny that he collected one from the tenant, I find, on a balance of probabilities, the landlord did charge the tenant a pet damage deposit of \$200.00 in addition to the \$445.00 security deposit.

Conclusion

Based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$695.00** comprised of \$445.00 security deposit owed; \$200.00 pet damage deposit owed and the \$50.00 fee paid by the tenant for this application.

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: July 23, 2015

Residential Tenancy Branch

