



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lighthouse Realty Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: MNDS, FF
Tenant: MNDS, 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's agent and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to retain part of the security 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 all or part of the security deposit 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 into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on April 22, 2010 for a 1 year fixed term tenancy beginning on May 1, 2010 that converted to a month to month tenancy on May 1, 2011 for the monthly rent of \$975.00 due on the 1st of each month with a security deposit of \$487.50. The tenancy ended on November 30, 2014;
- A copy of a Condition Inspection Report recording the condition of the rental unit at the start and end of the tenancy; and
- Various emails between the parties near and after the end of the tenancy.

The parties agree the tenant had made alterations to the walls to allow for the running of wires and installation of the tenant's television system. The tenant submitted that he left the holes in the walls so that the next tenant would not have to create them if they wanted to install their own television system.

The tenant submits that the landlord's agent was not the person who completed the move out inspection and he had intended to ask her about leaving the walls as he had made them. He

states that as a result he was not informed until mid-December 2014 that the walls needed to be repaired.

The tenant submits the landlord would not allow him to have his own handyman make the repairs and if she had he would have been able to complete them for approximately \$75.00. During the hearing the landlord offered a settlement proposal of allowing the landlord to retain \$87.50.

The landlord submits that repairs required patching the holes and painting the entire wall to ensure the paint would match. She states she had obtained an estimate in the amount \$300.00 plus \$15.00 GST. The landlord seeks to retain this amount from the tenant's security deposit.

The tenant acknowledged that he provided the landlord with his forwarding address by email in response to the landlord's email dated December 12, 2014.

The parties agree that the landlord had provided the tenant with a cheque in the amount of \$172.50 for return of the balance of the security deposit. While the tenant acknowledged that he had received this cheque he testified that he had not yet cashed the cheque.

Analysis

In relation to the cheque provided by the landlord to the tenant and in recognition that the tenant has not cashed that cheque and it is likely stale dated I order the tenant to return the uncashed cheque to the landlord.

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.

Based on the testimony of both parties I find the tenant failed to comply with the requirements of Section 37, specifically failing to repair the wall where his television had been installed. I find the landlord as a result, has suffered a loss.

However, in the absence of any documented estimate to complete repairs and in consideration of the tenant's estimate for the costs of repair I find the landlord has failed to establish the value of the cost of the repair. As such, I award the landlord a nominal amount for the repair equivalent to the amount offered by the tenant as a potential settlement.

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 deposit or file an

Application for Dispute Resolution to claim against the security 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.

Based on the testimony of both parties, I find the landlord received the tenant's forwarding address on December 12, 2014 and as such the landlord had until December 27, 2014 to either return the deposit in full or file an Application for Dispute Resolution seeking to claim against the deposit. As the landlord filed her Application on December 17, 2015, I find the landlord has complied with her obligations under Section 38(1) and the tenant is not entitled to double the amount of the security deposit.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$112.50** comprised of \$87.50 compensation for repairs and \$25.00 of the \$50.00 fee paid by the landlord for this application, as she was only partially successful in her claim.

I order the landlord may deduct this amount from the security deposit held in the amount of \$487.50 in satisfaction of this claim. I grant a monetary order to the tenant in the amount of **\$400.00** for the balance of the security deposit and \$25.00 of the \$50.00 fee paid by the tenant, as he was only partially successful in his claim.

In note also that should the tenant successful negotiate the cheque dated December 15, 2014 in the amount of \$172.50 this amount must be applied as partial satisfaction of the above noted monetary order.

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 28, 2015

Residential Tenancy Branch

