



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to where the tenant resides on March 12, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on January 1, 2012. The tenancy agreement provided that the tenant(s) would pay rent of \$640 per month payable on the first day of each month.

The tenant paid a security deposit of \$312.50. In addition the tenant paid a \$65 refundable fee for a remote control and a \$20 fee for a set of keys.

The tenancy ended on February 28, 2015. The tenant returned remote control and keys in the next couple of days. The tenant testified the landlord has not returned the \$85 for the remote control fee and set of keys.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. The landlord claimed the sum of \$212.50 for the cost of cleaning. The cleaning charge was based on 8.5 hours multiplied by \$25 per hour. After carefully considering all of the evidence including the oral testimony and photographs determined the amount claimed is unreasonable and not supported by the evidence. I determined \$175 is a reasonable sum for this claim.
- b. I determined the landlord is entitled to \$25 for the cost of drape cleaning.
- c. The landlord claimed the sum of \$100 for the cost of garbage removal and storage. I determined this sum is unreasonable and not supported by the evidence. I determined the sum of \$60 is reasonable for this claim.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$260 plus the \$50 for the cost of the filing fee for a total of \$310.

The security deposit of \$312.50 exceeds the landlords claim. However, the tenant testified she told the landlord's she was not interested in the return of the security deposit and that the landlord could retain it. The tenant stated she did want the return of the remote control fee and

the key fee. **As a result I ordered that the landlord shall retain the security deposit of \$312.50 in satisfaction of its claims including the cost of the filing fee.**

The tenant submits the key fee and the remote control fee should not be considered a security deposit and should be return to her as she returned those items shortly after the end of the tenancy.

The definition of security deposit in the Residential Tenancy Act excludes these types of fees. It provides as follows:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

Section 97(2)(k) of the Act provides as follows:

Power to make regulations

97 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the [Interpretation Act](#).

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

...

- (k) respecting refundable and non-refundable fees that a landlord may or may not impose on a tenant and limiting the amount of a fee that may be imposed;

Section 6(1) of the Residential Tenancy Act Regulations includes the following:

Refundable fees charged by landlord

- 6 (1) If a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is
- (a) refundable upon return of the key or access device, and
 - (b) no greater than the direct cost of replacing the key or access device.
- (2) A landlord must not charge a fee described in subsection (1) if the key or access device is the tenant's sole means of access to the residential property.

I accept the submission of the tenant that the landlord did not have a legal right to retain the remote control and key fees and considering it as part of the security deposit. **I ordered that the landlord pay to the tenant the sum of \$85 which is the remote control and key fees.** The tenant is entitled to the return of those sums even if the landlord was entitled to more than the security deposit.

Should the landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and 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 24, 2015

Residential Tenancy Branch

