



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, 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, pursuant to section 72.

The landlord's agent, ML ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord confirmed that she is the office manager for the landlord company named in this Application and that she had authority to represent the landlord company as an agent at this hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

Issues to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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

Both parties agreed that this tenancy began on December 15, 2013 and ended on November 30, 2014. Monthly rent in the amount of \$1,650.00 was payable on the first day of each month. A security deposit of \$825.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was provided with the landlord's Application.

Both parties agreed that a move-in condition inspection and report were completed on December 13, 2013 and a move-out condition inspection and report were completed on December 4, 2014. Neither party provided a copy of either report for this hearing. Both parties agreed that the landlord had written permission from the tenant to retain \$275.63 from the security deposit for cleaning charges, as noted on the move-out condition inspection report. The landlord confirmed that she received a written forwarding address from the tenant on December 4, 2014, by way of the move-out condition inspection report. The landlord confirmed that she filed her application to retain the tenant's security deposit on January 13, 2015.

The landlord seeks \$560.00 for damages to the rental unit after the tenant vacated. The landlord stated that the rental unit was new when the tenant moved in and that a light black mark was discovered on a living room wall when the tenant moved out, due to a desk being against the wall. The landlord stated that she did not submit a photograph of this mark because it was so light in colour that it would not show up in a photograph. The landlord stated that the wall had not yet been fixed but that it had to be repainted. The landlord testified that she noted a light mark on the move-out condition inspection report. The landlord stated that she did not know the cost of the painting but that she would like me to determine the amount.

The tenant disputes the landlord's claim, stating that there was only one tiny mark on the wall, not a scratch, and that it was normal wear and tear. The tenant stated that she disagrees with the cost being claimed by the landlord and she did not agree to any deduction for this mark on the move-out condition inspection report.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings are set out below.

Damages

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 or 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 and show efforts to minimize that loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In summary, the landlord must prove the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the landlord did not provide sufficient evidence to show that the black mark on the wall was beyond reasonable wear and tear for this rental unit. The landlord did not provide any photographs of the mark. The landlord acknowledged that the mark was so light that it would not even show up on a photograph. The landlord did not provide any estimates or quotes to justify the \$560.00 being sought to paint the wall. It is the landlord's burden to prove, according to part 3 of the test above, the actual amount required to repair the mark. Accordingly, for the reasons stated above and on a balance of probabilities, I dismiss the landlord's claim for \$560.00 to repair the black wall mark in the rental unit.

As the landlord was unsuccessful in this Application, the landlord is not entitled to recover the \$50.00 filing fee from the tenant.

Return of Security Deposit

Residential Tenancy Branch (“RTB”) Policy Guideline 17 states the following with respect to a security deposit:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- *a*
landlord’s application to retain all or part of the security deposit... unless the tenant’s right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

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;...*
- *whether or not the landlord may have a valid monetary claim.*

In determining the amount of the deposit that will be doubled, the following are excluded:

- *...if the landlord’s right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.*

Section 38 of the Act requires the landlord to either return all of the tenant’s security deposit or file an application for dispute resolution for authorization to retain the deposit, within 15 days of the end of a tenancy and the tenant’s provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant’s written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord and at the end of the tenancy remains unpaid (section 38(3)(b)).

The tenant provided her forwarding address to the landlord, who acknowledged receipt on December 4, 2014. The tenancy ended on November 30, 2014. The tenant only gave the landlord written permission to retain \$275.63 from her security deposit. The landlord did not return the deposit or make an application for dispute resolution to claim against this deposit, within 15 days of the written forwarding address provision. The landlord filed her application on January 13, 2015, more than a month later.

The landlord continues to hold the tenant's security deposit of \$825.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to double the value of \$549.37, which is the security deposit of \$825.00 minus the \$275.63 that the tenant agreed to being deducted. Therefore, the tenant is entitled to \$1,098.74 minus \$275.63, totalling \$823.11.

Conclusion

The landlord's Application for a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement and to recover the filing fee for this application, is dismissed without leave to reapply.

I order the landlord to retain \$275.63 from the tenant's security deposit, as per the tenant's written agreement in the move-out condition inspection report and as agreed by both parties.

I issue a monetary order in the tenant's favour in the amount of \$823.11 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: August 27, 2015

Residential Tenancy Branch

