



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SPORTSTALK SHOW INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Section 7 and 67;
- c) An Order to retain a portion of the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant for orders as follows:

- e) A refund of double their security deposit pursuant to section 38;
- f) Compensation for painting a bedroom and for a second remote; and
- g) To recover filing fees pursuant to Section 72.

SERVICE:

Both parties attended and agreed they received each other's Application for Dispute Resolution by registered mail. I find that the documents were legally served according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant damaged the property beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

Has the tenant proved on the balance of probabilities that they are entitled to double their security deposit and to other compensation and to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced March 1, 2014 on a fixed term lease to February 28, 2015, a security deposit of \$2850 was paid and rent was \$2850 a month.

It is undisputed that the tenants vacated February 28, 2015 and provided their forwarding address in writing by email on March 4, 2015. I find the landlord made this Application on March 10, 2015. It is undisputed that the landlord also returned \$2600 to the tenant on March 10, 2015.

The parties agreed that they were ignorant of the law regarding security deposits at the beginning of the tenancy and the tenant paid one month's rent as deposit instead of one half as allowed by section 19 of the Act and the tenant did not subtract the overpayment from rent as permitted by section 19(2).

The landlord claims as follows:

\$200: to repair 25 nail holes and repaint the two affected walls. The walls were likely painted in 2005. An invoice and photographs were supplied in evidence.

The tenant claims as follows:

\$3100: double security deposit (\$5700 less \$2600 refunded); the tenant relies on section 4 of the lease which is the standard form of the Residential Tenancy Branch.

\$173.14: to paint Southwest bedroom

\$31.59: for the second garage remote he bought.

\$50: reclaim from landlord with holding it from security deposit.

The tenant states the decoration of the Southwest bedroom was inappropriate for his son so it was necessary to paint the walls. The landlord said he gave permission for the tenant to do this but at his own cost. He said the bedroom had been used by his daughter and the tenant wanted it for his son so decided to change the paint although there were two other bedrooms in neutral colours. The landlord refuses responsibility for this cost.

The tenant said the garage was a double car garage and needed two remotes so he had to buy a second one. The landlord had declined by email dated October 26, 2014 to pay for this although he said the tenant could buy another one and keep it if he wanted. The landlord said other tenants had used the garage as a single car garage.

In evidence is the tenancy agreement, photographs from both parties, invoices, copy of the refund cheque and statements of both parties.

On the basis of the documentary solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus of proof is on each applicant to prove their claim on a balance of probabilities. The landlord has the onus to prove that the tenant damaged the property, that it was beyond reasonable wear and tear and the amount it cost to cure this damage. I find the landlord's evidence credible in respect to the holes made in the family room wall by the tenant. Although the tenancy agreement gave permission to wire cable jack into the living room, I note it said the plug would be ideally located beside the outlet to the right of the fireplace. The landlord's statements and photographs illustrate that holes were made from this plug across the room to the fireplace, over the fireplace, along the baseboard to the next wall. Contrary to the tenant's allegation, I find photographs of this room shows walls in good condition (not patched with patchy paint), and I find these 25+ holes made by the tenant were damage beyond reasonable wear and tear. I find Residential Tenancy Guideline 40 assigns a useful life for building elements in rented premises which is designed to account for reasonable wear and tear. I find paint is assigned a useful life of 4 years and the weight of the evidence is that this paint was beyond its useful life so no compensation is provided for painting. Based on the global estimate provided of \$200 to repair and paint two walls, I find the repairs likely cost \$100 of this and the painting \$100. In calculating this, I take notice that the tenant paid \$140 in labour to paint all four walls in the upstairs bedroom. I find the landlord entitled to recover \$100 for repairs on the damaged walls. No further compensation was claimed by the landlord.

In respect to the tenant's claim, I find they paid \$2850 security deposit which was in excess of the amount permitted by legislation and stated in their tenancy agreement. The remedy for this is provided in section 19 (2) of the *Act* which permits the tenant to deduct the overpayment from rent. I find the tenant did not do this as they admitted in the hearing as neither they nor the landlord realized their error. I find section 4 of their lease which is on the standard Residential Tenancy Branch form mirrors the legislation found in section 38 regarding security deposits. Section 38 of the *Act* states:

Return of security deposit and pet damage deposit [emphasis mine]

38 (1) *Except as provided in subsection (3) or (4) (a), **within 15 days** after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

*(d) **make an application for dispute resolution** claiming against the security deposit or pet damage deposit.*

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find in this case, I find the lease ended on February 28, 2015 and the tenant provided their forwarding address in writing on March 4, 2015. The landlord made his application on March 10, 2015 which I find is well within the limitation period of 15 days to claim against the deposit, so the tenant is not entitled to double their security deposit refunded. Although the tenant contended since the security deposit exceeded the legal half of one month's rent, the landlord was not entitled to claim against the deposit according to section 4 (3) of the lease, I find that this is not the correct interpretation of the intention of the legislation since such a penalty is not included in section 38 of the Act. A lease term does not override the Act pursuant to section 5. I find the remedy for overpayment of security deposit is set out in section 19 of the Act as noted above; I note that if the landlord had not made application within 15 days to claim against the deposit, he may have been penalized by having to pay double the excessive security deposit in accordance with section 38. I find the tenant is entitled to any balance of their security deposit, taking into account that the landlord already refunded \$2600.

In respect to the tenants' claim for painting a room and for the second remote for the garage, I find the landlord never agreed to reimburse the tenant for these items. I find this loss or cost was not incurred due to act or neglect of the landlord. While the landlord may have give permission for these items, I find the weight of the evidence is

that they were for the tenants' own benefit and the landlord never agreed to reimburse for such items. I dismiss this portion of the tenants' claim.

Conclusion:

I find the parties entitled to monetary awards as calculated below. I find both parties entitled to recover filing fees paid for their applications as both had merit. The balance is in favour of the tenants and a monetary order is included in their favour.

Calculation of Monetary Award:

Security deposit(no interest 2014-15)	2850.00
Tenant filing fee	50.00
Less refund to tenant	-2600.00
Less award to landlord for wall repair	-100.00
Less filing fee to landlord	-50.00
Total Monetary Award to Tenant	150.00

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: September 09, 2015

Residential Tenancy Branch

