



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD OLC FF

Introduction:

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

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) For a return of twice the security deposit pursuant to section 38;
- e) An Order that the landlord obey the provisions in the Act; and
- f) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy for landlord's use of the property and of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

The tenant vacated the unit on March 1st or 3rd, 2015. Has the landlord proved on the balance of probabilities that the tenant did damage to the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice his security deposit refunded and to recover filing fees for the application?

Background and Evidence:

Both parties and witnesses for the landlord attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced originally in October 2013 with rent of \$1300 as someone was occupying the basement; a new lease began on April 1, 2014, rent was \$1900 a month inclusive and a security deposit of \$950 was paid. The tenant was served a Notice to End Tenancy for landlord's use of the property, effective February 28, 2015 and received one month's free rent; he states they moved out March 1, 2015 and paid for the extra day's extension. The landlord said they did not remove all belongings until March 3, 2015. It is undisputed that the tenant provided their forwarding address in writing on March 5, 2015. The tenant filed his Application to claim twice the security deposit pursuant to section 38 on March 24, 2015. The landlord filed an Application to claim against the security deposit on April 13, 2015.

The landlord claims as follows:

\$260: cleaning

\$100: lawn repair

\$100: missing drawers from kitchen cabinet

\$60: halogen light bulbs for kitchen + \$6 for other bulbs

\$139: carpet cleaning

\$110: curtain cleaning living room

\$200: broken curtain rod in living room

\$50: bathroom rod

\$50: banister railing

\$80: to replace blinds in kitchen

\$150: to replace a missing hose and nozzle from power washer

\$30: for missing beige garbage can.

The landlord also noted other damages such as a mildewed refrigerator in the basement, broken shed window, power washing walkways, and uncleanable gas range because of baked on food and damages to walls. She said the costs amounted to significantly more than the security deposit (\$1112.50 + \$950) but she was willing to waive anything in excess of the security deposit. The landlord said they attended to do a condition inspection report with the tenant but he threw the keys on the counter and left and said he would see them at the RTB.

The tenant had English as a second language and the landlord and I had some difficulty in understanding him; he agreed he left and threw the keys on the counter. He said there was a problem as he had no time on the weekend. He said the photographs submitted by the landlord were old photographs taken before his tenancy.

The tenant agreed he owed money for lightbulbs but did not agree with the other charges. He said they left the home clean, did not damage the lawn and the hose and nozzle from the power washer were his property to take.

The witness for the landlord said she saw the house before and after the tenancy. She said it was immaculate before and in terrible condition afterwards. She said she saw the cleaning lady there working for two days and saw the damage to the lawn; she saw the tenants driving over the lawn all the time and heard the lawn repair person estimated \$100 to fix it.

In evidence is the Notice of forwarding address dated March 5, 2015, the two month Notice to End Tenancy for landlord's use of the property, a list of damages, photographs and a move-in Condition Inspection Report.

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

Analysis

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.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. Section 37 of the *Act* provides that the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. I find the landlord satisfied the onus of proving the tenant violated section 37 of the *Act* by leaving the unit in a dirty condition. I find the landlord's evidence well supported by the witness who saw the unit at move-in and move-out and described it at move-out as in a terrible condition; I find the photographs support her evidence also. I find the landlord entitled to recover \$260 + \$139+\$110 for cleaning and \$100 for lawn repair. I find the witness evidence credible that she saw the cleaning person there for two days and the carpet cleaning person she knows their costs and she heard the estimate for the lawn repair. I find the tenant

agreed to his responsibility for the lightbulbs so I find the landlord entitled to recover \$66 for lightbulbs. I dismiss the remainder of the claim of the landlord as I find insufficient evidence of the cost to repair. As noted to the landlord in the hearing, the security deposit remains in trust for the tenant and any claim against it must be proved in accordance with section 7 above and evidence such as invoices or estimates or direct evidence of cost is necessary..

On the tenant's application, the onus is on him to prove on the balance of probabilities that twice the security deposit should be refunded in accordance with section 38 of the Act. I find the tenant vacated on March 1st or 3rd and provided his forwarding address in writing on March 5, 2015. I find the landlord has not refunded the tenant's security deposit and they filed their application on April 13, 2015y 1, 2013 which is well beyond the 15 day limitation set out in section 38 of the Act.

The Residential Tenancy Act provides:

Return of security deposit and pet damage deposit

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. ...

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

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

I find the evidence of the tenant credible that he paid \$950 security deposit on, served the landlord with his forwarding address in writing on March 5, 2015 after he vacated the premises on March 1st or 3rd, 2015. I find he gave no permission for the landlord to retain the deposit and has not received the refund of his security deposit. I find the tenant entitled to recover double his security deposit.

Conclusion:

I find the tenant entitled to recover double his security deposit plus filing fee less the monetary amounts awarded to the landlord as calculated below. I find the landlord entitled to recover filing fees for this application as her application had merit also.

Calculation of Monetary Award:

Double security deposit (2x950)	1900.00
Filing fee	50.00
Less cleaning costs to landlord(260+139+110)	-509.00
Less lawn repair cost	-100.00
Less light bulb cost	-66.00
Less filing fee to landlord	-50.00
Total Monetary Order to Tenant	1225.00

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 02, 2015

Residential Tenancy Branch

