



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution pursuant to the *Residential Tenancy Act* (the Act).

The tenant filed on May 20, 2015, and as amended, for the return of their security deposit and compensation pursuant to Section 38 of the Act.

The landlord filed on May 14, 2015 pursuant to the Act for an Order to retain the tenant's security deposit in respect to damage to the unit.

Both parties sought recovery of their filing fee.

Both parties attended the hearing and were given full opportunity to present relevant evidence and make relevant submissions. The parties acknowledged receiving the evidence of the other inclusive of document and photographic evidence. The landlord was additionally represented by an agent. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

The tenant testified they provided evidence the landlord did not serve them their application within 3 days of the hearing package being made available to the landlord – and therefore the landlord's application should be dismissed. The landlord acknowledged sending their package to the tenant on June 03, 2015 after receiving the package from Residential Tenancy Branch on May 25, 2015. The tenant acknowledged receiving the landlord's application and evidence June 09, 2015. The tenant testified that receiving the landlord's hearing package later than prescribed did not impede their ability to understand the case against them nor prevented them from formally or adequately responding to the landlord's case or advancing their own. I heard the

tenants arguments on this point and the landlord's response and considered the tenant's request in respect of the hearing set date 4 ½ months after the tenant's receipt of the landlord's materials. I found the tenant was not unfairly prejudiced by the landlord's delay at the very outset of this matter. The hearing proceeded on the merits of the parties' applications.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began March 01, 2012 and was guided by a written tenancy agreement.. At the outset the landlord collected a security deposit in the amount of \$450.00 which they retain in trust. The tenant vacated April 30, 2015.

The parties conducted move in and move out inspections in accordance with the Act and I have benefit of the respective Condition Inspection Report [CIR]. The parties agree the tenant provided the landlord with their written forwarding address on April 30, 2015 within the CIR.

The tenant argues that at the end of the tenancy the landlord did not identify *damage* in the CIR – instead, stating that the *entry door locks were changed*. The landlord argues that although not stated as such, the CIR identified under *Damage* the entry door hardware and mechanism was altered from the original without permission or knowledge of the landlord and that the entry door and jamb / frame was also altered and appeared compromised as a result of the alteration by the tenant - for which the landlord submitted they expended \$405.89 to rectify the alteration as it allegedly operated poorly, the face / skin of the door was left marked, capped, and compromised, and the door jamb / frame was left cracked and appearing unsecured by the alteration. The tenant argued they had notified the landlord of the alteration midway through the tenancy and provided keys, and the landlord knew the alteration was done as an “emergency repair” event. The tenant did not support this event with additional evidence. Regardless, the tenant disagrees the landlord should be compensated for replacement of the entry lock as the entry lock's operation and appearance sufficed: testifying this to be the reason the landlord did not write it as *damage*. The parties agreed they discussed the state of the door and hardware during the move out inspection but did not come to agreement respecting the door thus the landlord applied for dispute resolution. The tenant provided a series of photographs depicting the condition of the rental unit at the tenancy end, including a photograph of the lockset

edge of the door. The landlord provided a similar photograph of the lockset edge of the door, and additionally a photograph of the corresponding door jamb / frame which appeared compromised and broken. Another photograph from the landlord showed the door face / skin at the lockset edge with a 'capped' lockset hole, which both parties agreed was not present at the outset of the tenancy. The landlord seeks compensation for repairs.

The tenant seeks double their security deposit.

Analysis

I have reviewed the submissions of the parties. On the preponderance of the document submissions and testimony of the parties, I find as follows.

It must be known that a tenant is not responsible for reasonable or normal wear and tear to the rental unit. The landlord is claiming the tenant is responsible for *damage* – or a deterioration or change resulting in an excess of wear and tear – the reason for which, while discussed, is not wholly relevant. While I accept the tenant may have acted with reason at the time of the change in the door, I must determine whether the result of the tenant's conduct left the door in a state beyond the scope of reasonable wear and tear. In this matter, I accept the landlord's evidence that on the CIR they identified the entry door and it's hardware were altered from the original, and in the process have provided sufficient photographic evidence the door structure and hardware were sufficiently compromised that I find them to have been *damaged* and not solely the result of wear and tear. As a result, I grant the landlord their claim for **\$405.89** for repairs to the entry door. The landlord is further entitled to recover their filing fee of \$50.00.

I find the landlord filed an application seeking to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address, as required by Section 38(1) of the Act. As a result, the tenant is not entitled to compensation prescribed by 38(6). As I have found the landlord entitled to recover from the tenant an amount in excess of the tenant's original security deposit the tenant's application is effectively **dismissed**. The tenant's deposit will be offset from the award made herein.

Calculation for Monetary Order

Landlord's award for repairs	\$405.89
Landlord's filing fee	\$50.00
<i>Minus security deposit held in trust</i>	<i>-\$450.00</i>
Total Monetary Award for landlord	\$5.89

Conclusion

I Order that the landlord may retain the security deposit of \$450.00 in partial satisfaction of their claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$5.89**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: October 27, 2015

Residential Tenancy Branch

