



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord applied on May 29, 2015 for:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on June 12, 2015 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order for return of double the security deposit - Section 38.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amount claimed?

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The tenancy started on November 1, 2014 and ended on April 30, 2015. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit. The security deposit has not been returned to the Tenant. No move-in or move-out condition inspection was conducted or reports completed.

The Landlord states that it received the Tenant's forwarding address on either May 15, 16 or 17. The Tenant states that its forwarding address was mailed to the Landlord on May 7 or 8, 2015. The Tenant claims return of double the security deposit.

The Landlord states that the Tenant failed to clean the living room and bedroom carpets at move-out. The Landlord states that the majority of the stains were on the living room carpet. The Landlord states that they do know if the Tenant cleaned the carpet. The Landlord provided a photo of the carpets. The Landlord claims \$240.80 for the costs to clean the carpet. The Landlord provided an invoice dated May 15, 2015 from the carpet cleaning company that notes the condition of the carpet.

The Landlord states that the Tenant broke the towel bar. The Landlord states that this was repaired by a contractor for the amount estimated on May 15, 2015. The Landlord states that the repairs were done in September 2015 and that the Landlord paid \$89.25 in cash for the costs that included gst. The Landlord provided the estimate for repairs. The Landlord provided a photo of the towel bar. The Tenant states that at the end of the tenancy the towel bar was attached to the wall and that the bar was not unattached during the tenancy. The Landlord states that the Tenant's video does not show any parts of the bathroom.

The Landlord states that the Tenant failed to clean the unit, including the bathroom and inside and outside the cupboards. The Landlord provided photos of an oven, a washing machine door and 2 cupboards. The Landlord claims \$90.00 for a cleaning service cost and provides the invoice. The Tenant states that the unit was cleaned and that the video evidence supports the cleaning.

The Landlord states that the Tenant let oil drain on the driveway causing stains and claims the costs of removing and replacing existing gravel on the driveway. The Landlord provides two photos of the gravel driveway. The Landlord claims \$286.00 and provides an invoice from the company that did the work. The Tenant states that no oil was ever leaked by any of the Tenant's vehicles, that the oil can shown in one of the Landlord's photos is unknown and not the Tenant's and that other vehicles were parked on the driveway as well during the tenancy. The Tenant states that the amount of gravel being claimed by the Landlord is excessive for covering small areas.

Analysis

Section 23 of the Act requires that at the start of a tenancy, a landlord and tenant must together inspect the condition of the rental unit and the Landlord must complete a condition inspection report in accordance with the regulations. Section 24(2) of the Act provides that where a landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Since the Landlord's right to claim against the security deposit was extinguished at the onset of the tenancy the Landlord had only one option at the end of the tenancy in relation to the security deposit: return it in full. As the Landlord did not, I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$850.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given the carpet cleaning invoice noting the stains on the carpet, considering that the Tenant provided no supporting evidence of having cleaned the carpet, such as a carpet cleaner receipt, and noting that the Tenant's living room carpet video does not show the area shown in the Landlord's photo, I find that the Landlord has substantiated on a balance of probabilities that the Tenant failed to leave the carpet reasonably clean. Given the receipts for the cost of the cleaning, I find the Landlord entitled to **\$240.80**.

Given the photo of the towel bar and the estimate received shortly after the end of the tenancy, I find that the Landlord has substantiated that the Tenant left the towel bar damaged. Given the estimated amount and considering the lack of an invoice, I find that the Landlord is entitled to **\$85.00** as provided in the estimate.

Given the Tenant's video of the unit and considering that the Landlord's photos only indicate a few small items left behind and removable tinfoil on the bottom of the oven with no observable stains elsewhere, I find that the Landlord has failed to substantiate that the unit was not reasonably clean. I dismiss the claim for cleaning costs.

Given the lack of a move-out condition report, considering that the photos of the Landlord do not show much in the way of damage and considering that other vehicles also parked in the driveway, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant damaged the driveway. I therefore dismiss the Landlord's claim for costs to repair the driveway.

As the Landlord's application was met with limited success, I decline to award recovery of the filing fee. Deducting the **\$325.80** owed by the Tenant from the **\$850.00** owed by the Landlord leaves **\$524.20** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$524.20**. If necessary, this order may be filed in the Small Claims 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: October 29, 2015

Residential Tenancy Branch

