Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF, MNDC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit 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 his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- A monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend. The landlord provided undisputed affirmed testimony that the tenant was served with the landlord's notice of hearing package by Canada Post Registered Mail on June 6, 2015 and has submitted a copy of the Canada Post Registered Mail Customer Receipt Tracking number as confirmation. The landlord stated that an online search of the Canada Post Website showed that the tenant had received and signed for the package. The landlord stated that she was served with the tenant's notice of hearing package and is aware and understands the tenant's application for dispute. Based upon the undisputed evidence of the landlord, I find that the landlord has properly served the tenant with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on June 6, 2015 and is deemed served 5 days later as per section 90 of the Act.

Preliminary Issue(s)

Rule 7 of the Residential Tenancy Branch's Rule of Procedure states in part,

> **Rule 7 – During the hearing**
> **7.1 Commencement of the dispute resolution hearing**
> The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.
> **7.3 Consequences of not attending the hearing**
> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.
> **7.4 Evidence must be presented**
> Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

After waiting 30 minutes past the start of the scheduled hearing time, the tenant's application was dismissed without leave to reapply as the tenant has failed to attend to advance his claim and the landlord was present to respond. As such, the hearing proceeded with the landlord's claim only.

Rule 4 of the Residential Tenancy Branch's Rule of Procedure states in part,

> **4.6 Serving an Amendment to an Application for Dispute Resolution**
> As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The landlord failed to file an amendment to her monetary claim increasing the amount from $160.00 to $328.00. Although the items are related to the end of tenancy, I find that the landlord submitted a monetary worksheet with the increased amount without the amendment to give notice to the Residential Tenancy Branch or the Respondent/Tenant. As such, I find that this would be highly prejudicial as the tenant has not attended and may or may not have been aware of the monetary increase as the monetary worksheet was part of a 48 page submission of documentary evidence. The landlord's monetary claim is limited to the original amount filed of $160.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

This tenancy began on December 7, 2012 on a fixed term ending on November 30, 2013 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated December 5, 2012. The monthly rent was $1,280.00 payable on the 1st day of each month and security deposit of $1,280.00 was paid on December 7, 2012. The landlord confirmed that the tenancy ended on May 15, 2015 and that a condition inspection report for the move-in was completed on December 7, 2012 and for the move-out on May 15, 2015. The landlord received the tenant's forwarding address in writing on May 15, 2015 as part of the condition inspection report for the move-out and again in a letter dated June 3, 2015.

The landlord seeks a monetary claim of $160.00, which consists of:

Replacement of blinds	$126.00
Carpet Cleaning	$84.00
Replace Missing Doormat	$33.60

This total amount for the three items listed total, $243.60. As noted the landlord's monetary claim is limited to the claim filed of $160.00.

The landlord stated that after the end of the tenancy and when she returned from out of the country she noted that there was damage caused to the furnished rental unit which consisted of broken blinds as shown in the landlord's submitted photographs, a stained carpet as shown by the submitted photographs and a missing doormat thrown away by the tenant as confirmed in an email exchange provided in evidence by the landlord. The landlord relies on a submitted copy of an invoice dated June 1, 2014 for the replacement of the same damaged blinds that were damaged previously at a cost of $126.00. The landlord refers to an email in which she received an estimate for the cleaning of the carpet stain dated June 1, 2015 for $84.00 based upon photographs. The landlord also relies upon an estimate of $33.60 for replacing the doormat based upon a printout from an online store website. The landlord stated that this was for a similar mat. The landlord clarified that none of these amounts were paid out for purchases or services as none of the damaged or missing items have been repaired or

replaced. The landlord also relies upon a completed condition inspection report for the move-in and the move-out. The move-out portion of the condition inspection report noted that both parties agreed that there was no damage to the rental unit. This report was signed by the tenant and the landlord's agent.

Analysis

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/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. In this case, the onus is on the landlord to prove on the 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.

The landlord has provided conflicting and contradictory evidence in support of her entitlement for claims in damages. I find based upon the landlord's conflicting evidence that the landlord has failed to establish an entitlement for the claim in damages of $160.00. Although the landlord has provided undisputed testimony that the rental property was damaged by a stain in the carpet, broken blinds and a missing doormat, I find that this is in conflict with the completed condition inspection report for the move-in completed on December 7, 2012 and the move-out completed on May 15, 2015 that clearly show that the landlord's agent made no notations of damage. This report stated in part,

> End of Tenancy
> Damage to rental unit or residential property for which the tenant is responsible:
> **NONE**

The condition inspection report for the move-out was completed by both the tenant and the landlord's agent on May 15, 2015. The landlord was unable to provide any explanation when asked about this contradiction. The landlord stated that "green notes added by landlord for information purposes and dated". The landlord clarified that she added in green ink to the condition inspection report after that report was signed by the tenant and the landlord's agent on May 15, 2015.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing. It is clear based upon the undisputed evidence of the landlord that the tenancy ended on May 15, 2015. The landlord received the tenant's forwarding address in writing on May 15, 2015 as part of the condition inspection report for the move-out and again on June 3, 2015 in a letter from the tenant. The landlord had applied for dispute resolution to dispute the return of the $1,280.00 original security deposit, but only applied to retain a small portion of that deposit. The landlord has failed to provide sufficient evidence of a monetary claim for damage caused by the tenant and of a right against the retention of the security deposit. The landlord's application is dismissed. The tenant is entitled to the return of the original $1,280.00 security deposit.

Residential Tenancy Branch Policy Guideline #17 states in part,

> **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**
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> 3. 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

It is clear that although the tenant failed to attend to advance his application the tenant has not specifically waived the doubling of the deposit in this case. The landlord filed an application for dispute resolution on June 3, 2015 after the tenancy ended on May 15, 2015 which is 4 days past the 15 day limitation period. As such, I find that section 38 (6) of the Act applies and the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. The tenant is entitled to a further monetary claim of $1,280.00, pursuant to section 38(6) of the Act.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour under the following terms which allows the tenant to recover the original security deposit plus a monetary award equivalent to the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act:

Item	**Amount**
Return of Security Deposit	$1,280.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	1,280.00
Total Monetary Order	**$2,560.00**

The tenant is provided with this order in the above terms and the landlord must be served with a copy of 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 orders 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: November 12, 2015

Residential Tenancy Branch