



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC; MNSD, FF

Introduction

This hearing dealt with the landlord's application against the tenant, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38.

This hearing also dealt with the tenant's cross-application against the landlord, pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and his advocate, NK (collectively "landlord") and the tenant and his advocate, SH (collectively "tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties confirmed that their advocates had authority to speak on their behalf at this hearing. This hearing lasted approximately 78 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Issues to be Decided

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for his Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed that this tenancy began on September 1, 2014 and ended on August 31, 2015, as per a fixed term tenancy of one year after which it would transition to a month-to-month tenancy. Monthly rent in the amount of \$1,890.00 was payable on the first day of each month. Both parties agreed that a security deposit of \$945.00 was paid by the tenant and the landlord continues to retain this deposit. A copy of the written tenancy agreement was provided for this hearing. The landlord stated that the rental unit is the main floor of a house, of approximately 1800 square feet with three bedrooms and two bathrooms.

Both parties agreed that the tenant did not give the landlord written permission to keep his security deposit. Both parties agreed that no move-in or move-out condition inspection reports were completed for this tenancy. Both parties agreed that the tenant did not provide a written forwarding address to the landlord. The landlord confirmed that his application was filed on October 21, 2015.

The landlord seeks a monetary order of \$3,230.00 for unpaid rent, cleaning and repairs to the rental unit. The landlord applied to offset the security deposit of \$945.00 against this monetary order.

The tenant seeks a return of double the amount of his security deposit, totaling \$1,890.00 because the landlord failed to return all of it or file an application to retain it

within 15 days of the end of this tenancy. The tenant also seeks to recover the \$50.00 filing fee paid for his application.

The landlord seeks \$1,890.00 in unpaid rent for August 2015, as the tenant vacated the rental unit at the end of that month and did not pay rent. The tenant agreed that he did not pay rent but stated that he should have obtained one month of rent compensation as per section 51 of the *Act* because the landlord gave him two months' notice to leave the unit. The landlord confirmed that he did not give two months' notice to the tenant on any Residential Tenancy Branch ("RTB") form; he only gave one month's notice for the tenant to leave at the end of July 2015 because the tenant requested the notice. The tenant also stated that the landlord did not take care of the rental unit properly.

The landlord seeks \$230.00 for carpet cleaning. The landlord confirmed that the carpet was very dirty and the tenant did not vacuum the carpet. The landlord did not provide any photographs of the carpet. The landlord relied on an invoice, dated September 7, 2015, in the total amount of \$1,130.00, where it states "carpet cleaning" was done for \$230.00. The tenant disputes the landlord's claim, stating that he vacuumed the carpet, cleaned it by hand with soap and that he had photographs but did not submit them.

The landlord seeks \$205.00 to clean the rental unit after the tenant vacated. The landlord stated that the entire rental unit had to be cleaned, including the window shades, the bathroom, the kitchen and kitchen cupboards. The tenant disputed the landlord's claim, indicating that he cleaned the entire rental unit. The landlord did not provide any photographs to show the condition of the rental unit. The landlord relied on the same invoice for \$1,130.00 where it states "general cleaning" was done for \$205.00. The landlord noted that the person who provided the invoice did not do the cleaning himself, he hired someone else to do it. The landlord confirmed that he did not know how many people cleaned the unit but advised that it took a whole day to clean.

The landlord seeks \$445.00 for removing and disposing of garbage, tools, wood and car parts from the rental unit after the tenant left many items behind. The tenant denies leaving any items behind when he vacated. The landlord confirmed that the garbage had to be taken to the landfill, but he did not provide a landfill receipt. The landlord did not provide any photographs of these items left behind. The landlord stated that it took a couple of hours to remove these items. In the same invoice for \$1,130.00, it states that "removing garbage, tools and car parts" was done for \$445.00.

The landlord seeks \$250.00 for painting all three bedrooms in the rental unit. He indicated that there were many picture-size nail holes as well as scratches on the walls. The landlord stated that when the tenant removed posters from the walls, it removed the paint. The tenant confirmed that there were small nail holes in the walls but that the

new tenant who moved into the unit was okay with the holes. The tenant stated that he had photographs of the walls but did not provide them. The landlord did not provide any photographs of this damage. The landlord maintained that the rental unit was last painted in 2012. The landlord relies on the same invoice for \$1,130.00 where it states "painting 3 bedrooms" was done for \$250.00.

The landlord seeks \$210.00 for replacing drapes and a rod in the rental unit. The landlord did not provide any photographs or a receipt for this cost. The landlord confirmed that the tenant ripped the drapes in one bedroom, broke the drapes rod in the living room and the vertical blinds were missing in the living room. The tenant denied all of the damage being claimed by the landlord, indicating that he did not cause it.

Analysis

Landlord's Application

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$1,890.00 for unpaid rent for August 2015. The tenant agreed that he did not pay rent for this month and he lived in the rental unit during this month. The tenant did not produce a 2 Month Notice to End Tenancy for Landlord's Use of Property on an RTB form, entitling him to one month's free rent compensation under section 51 of the *Act*. The landlord denied issuing such a form to the tenant. The landlord confirmed that only a one month's notice was given, which the tenant failed to abide by, leaving two months later.

I award the landlord \$230.00 for carpet cleaning. The landlord provided a receipt for this amount. The landlord noted that the carpets were dirty when the tenant vacated. Residential Tenancy Policy Guideline 1 indicates that the tenant will be held responsible for steam cleaning or shampooing carpets after a tenancy of one year. The tenant resided at this rental unit for one year. The tenant stated that he only vacuumed the carpet. The tenant indicated that he washed the carpet by hand with soap, but did not

provide any documentary evidence that he shampooed or steam-cleaned the carpet with a machine. Therefore, I find that the tenant was responsible to complete this cleaning and that he failed to appropriately clean the carpet prior to vacating.

I dismiss the landlord's claims of \$205.00 for general cleaning, \$445.00 for removing and disposing of items and \$250.00 for painting. The tenant denied all of the above claims. The landlord failed to provide documentary evidence, such as photographs, to show that the unit was dirty beyond reasonable wear and tear, that items were left behind by the tenant, or that the nail-size picture holes were excessive or beyond reasonable wear and tear as required by Residential Tenancy Policy Guideline 1.

I dismiss the landlord's claim of \$210.00 for replacing the drapes and rod in the rental unit. The landlord did not provide a receipt for this amount and failed part 3 of the above test.

Tenant's Application

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the tenant is not entitled to the return of double the amount of his security deposit. The landlord's right to claim against the deposit for damages was extinguished for failure to complete move-in and move-out condition inspection reports, as per sections 24 and 36 of the *Act*. However, the tenant failed to provide a written forwarding address to the landlord in order to trigger the doubling provisions of section 38 of the *Act*. Therefore, the tenant is not entitled to double the value of his security deposit from the landlord. The tenant is only entitled to the return of his original security deposit in the amount of \$945.00.

As the tenant was only partially successful in his application, I find that he is not entitled to recover the \$50.00 filing fee from the landlord.

The landlord continues to hold the tenant's security deposit of \$945.00. Over the period of this tenancy, no interest is payable. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's deposit of \$945.00, in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,175.00 against the tenant as follows:

Item	Amount
Unpaid Rent for August 2015	\$1,890.00
Carpet Cleaning	230.00
Offset Tenant's Security Deposit	-945.00
Total Monetary Award	\$1,175.00

The landlord is provided with a monetary order in the amount of \$1,175.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application to recover the \$50.00 filing fee is dismissed without leave to reapply.

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: December 21, 2015

Residential Tenancy Branch

