



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord testified that on 20 August 2015 he served the tenant with the dispute resolution package by registered mail. The tenant admitted service of the dispute resolution package.

Preliminary Issue – Amendment to Landlord's Application

At the beginning of the hearing the landlord indicated that he sought to amend his application. The landlord's application sets out that he seeks a monetary order in the amount of \$325.00; however the landlord's monetary order worksheet details a claim in the amount of \$1,050.02. The tenant did not consent to the amendment but stated that she understood the landlord to be applying to retain the security deposit and to recover amounts in excess of the security deposit.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. In determining whether or not to allow an amendment, I must consider the prejudice to the responding party.

On the basis that the tenant understood the amount and content of the landlord's claim, I allow the landlord's amendment as there is no undue prejudice to the tenant by way of the amendment.

The landlord's claim is amended to include a request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67. The landlord seeks compensation in the amount of \$725.02 on the following basis:

Item	Amount
Dish Sprayer	\$16.00
Carpet Cleaning	74.90
Cleaning	882.00
Registered Mail	14.35
Photographs	12.77
Filing Fee	50.00
Offset Security Deposit	-325.00
Total Monetary Order Sought	\$725.02

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 May 2015. The tenancy ended 31 July 2015. Monthly rent of \$650.00 was due on the first. The landlord continues to hold the tenant's security deposit of \$325.00, which was collected at the beginning of the tenancy.

No condition-inspection reports were created at the beginning or end of the tenancy. The landlord admitted receipt of the tenant's forwarding address, which was received on or about 31 July 2015.

The rental unit is a bedroom with shared use of a common area (kitchen, living area, and bathroom).

The landlord had a separate tenancy agreement with a third party. The third party occupied a bedroom and had use of the common area. The third party's tenancy began on or about 1 February 2015 and ended 31 July 2015.

The landlord provided testimony and photographic evidence as to the condition of the rental unit at the end of the tenancy. The landlord testified that the carpet was incredibly dirty in the living room area. The landlord testified that he did not know whether it was the third party or the tenant that caused the damage to the carpet. The landlord testified that the kitchen was dirty and the bathroom was dirty. The landlord testified that paint from the tenant's door was rubbed off.

The landlord testified that at the beginning of the tenancy the kitchen was clean. The landlord testified that the carpets were last professionally cleaned in January 2015. The landlord testified that he painted the door to the tenant's room two weeks prior to the beginning of the tenancy.

The tenant testified that the carpet was in the same state at the beginning of the tenancy as at the end of the tenancy. The tenant testified that the rental unit and common areas were cleaner at the end of the tenancy than at the beginning. The tenant testified that she cleaned the rental unit and common areas regularly. The tenant testified that there was rotten food in the refrigerator when her tenancy began. The tenant testified that she had to spend an entire weekend cleaning at the beginning of her tenancy. The tenant testified that her bedroom door would get stuck and she would have to "bump" it open. The tenant speculates that this may have been how the paint was worn off the door.

Analysis

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the

claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

Section 21 of the *Residential Tenancy Regulation* (the Regulation) establishes that the condition move in inspection report is strong evidence to the state of the rental unit at the time the tenancy began. By failing to complete a condition inspection report at the beginning of the tenancy, the landlord has denied himself the best evidence of the state of the rental unit at the beginning of the tenancy.

Liability in this matter is complicated by the fact that the tenant and the third party were tenants in common as they were not parties to the same tenancy agreement with the landlord. *Residential Tenancy Policy Guideline*, "13. Rights and Responsibilities of Co-tenants" sets out the rights and obligations of tenants in common:

"Tenants in common" sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.

The landlord has testified that the rental unit was clean at the beginning of the tenancy; however, the tenant testified that the rental unit was not clean. The landlord did not complete a condition inspection report at the beginning of the tenancy to record the condition. For these reasons, the landlord has not provided sufficient evidence to prove, on a balance of probabilities, that the condition at the end of the tenancy was worse than the condition at the beginning of the tenancy. By failing to establish this fact, the landlord has failed to establish that the tenant breached the Act and caused him loss.

Further, the landlord has failed to show that any failure under the Act was this tenant's responsibility. The allegations regarding the condition of the common areas were not shown to be the fault of the tenant versus that of the third party. As tenants in common, the tenant is not responsible for any obligations of the third party.

For these reasons, I find that the landlord has failed to show the tenant is liable for damage to the sink sprayer, the carpet, and the general cleaning.

In respect of the claim for painting, I accept the tenant's testimony that the eroded paint on her bedroom door was the result of wear and tear from "bumping" the stuck door

open. As the damage was the result of reasonable wear and tear given the functionality of the door, I find that the tenant is not responsible for the cost of this repair. On this basis, the landlord is not entitled to recover the cost of repainting the door from the tenant.

The landlord has claimed for his costs associated with providing photographic evidence and the costs associated with serving documents in these proceedings. These costs are best characterized as “disbursements” incurred in the course of these proceedings.

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional and includes disbursement costs. Furthermore, I find that disbursements are not properly compensable pursuant to section 67 of the Act as the tenant’s contravention of the Act is not the proximate cause of the expense.

I find that the landlord is not entitled to compensation for the landlord’s disbursement costs as disbursements are not a cost that is compensable under the Act.

As the landlord has not been successful in this application, he is not entitled to recover his filing fee from the tenant.

As the landlord has not established any claim he is not entitled to retain the tenant’s security deposit. *Residential Tenancy Policy Guideline*, “17. Security Deposit and Set off” provides guidance in this situation:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord’s application to retain all or part of the security deposit, or
- a tenant’s application for the return of the deposit

unless the tenant’s right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence before me that indicates that the tenant’s right to the security deposit has been extinguished. As there is a balance in the amount of \$325, I order that the balance of the tenant’s security deposit shall be returned to the tenant.

Conclusion

The landlord's application is dismissed.

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 28, 2016

Residential Tenancy Branch

