



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for a monetary order for unpaid rent pursuant to section 67 and 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; as well as authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for authorization to obtain a return of all or a portion of the security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended. The landlords were represented by Landlord T and the tenants were represented by his mother ("the tenant's representative"). Both parties confirmed receipt of the other's Applications for Dispute Resolution as well as their materials for the purposes of evidence at this hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage or loss? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order? Are the landlords entitled to recover the filing fee for this application? Are the tenants entitled to the return of all or a portion of their security deposit? Are the tenants entitled to recover their filing fee?

Background and Evidence

This tenancy began on August 1, 2014 as a one year fixed term with a rental amount of \$850.00 payable on the first of each month. A security deposit of \$425.00 was paid by the tenants at the outset of this tenancy (July 23, 2014). The tenants vacated the rental unit on August 31, 2015. The tenant's representative provided undisputed sworn

testimony that a forwarding address was provided by email to the landlords on that same date: August 31, 2015. The tenant's representative referred to two pieces of correspondence providing a forwarding address: one email and one handwritten letter.

Both parties agreed that no condition inspection report was created at the start or end of this tenancy. Landlord T testified that, after the tenant vacated the rental unit, he inspected the unit. Landlord T testified that he discovered damage to a storm door and the interior walls. With respect to the storm door, Landlord T testified that he had verbally warned the tenant that, if the storm door was left open, it would be damaged. He testified that he had provided no written warning or information with respect to the storm door. He testified that, by the end of the tenancy, the storm door needed to be replaced as it was rusted and damaged. He submitted a photograph to verify that the door was rusted and had a hole in it. He testified that he was unsure but that he believed the storm door was new prior to the tenant moving into the residence. The tenant's representative testified that the storm door was rusted and damaged, as well as old at the outset of the tenancy.

The landlord also testified that it was necessary to conduct drywall repair and paint within the rental unit at the end of the tenancy. He testified that, as a result of pictures hung by the tenant with screws and a coat rack hung in the bedroom, there were several patches and holes in walls within the rental unit. The landlords submitted photographs of approximately 15 holes in the wall.

A copy of an email sent by the landlord to the tenant's representative on September 15, 2015 was submitted as evidence at this hearing. Attached to the email was a "security deposit refund form" with handwritten information with respect to this tenancy. The form indicated that no amount was enclosed as a security deposit refund. A calculation was provided as follows,

Description	Cost
Storm Door	\$250.88
Drywall Repair	50.00
3 Gallons of paint, painter hours, etc.	183.36
Total Deductions	\$484.24

The landlord submitted documentary evidence in support of his claim for a monetary award. He provided a receipt for \$250.88 in costs at a hardware store. There was no itemization on the receipt for the purchase. A second receipt for a hardware store provided an amount of \$316.16 with tax and itemized 5 cans of paint as well as two other items under \$10.00. The landlord also submitted an invoice with no letterhead or

company information for drywall work at the rental unit totalling \$250.00 and dated September 13 but with no year provided.

The landlord testified that he and his co-landlord purchased the residential premises approximately three months prior to the tenant moving in. He testified that he believes the house is approximately 30 years old and that they had painted the entire residence after their purchase. He testified that he and his co-landlord “went above and beyond” in ensuring the young tenant was satisfied with the rental unit during his tenancy.

The tenant’s representative testified that she was present when her son rented the landlord’s unit. She testified that the unit was less than clean and in top condition at the outset of the tenancy. She acknowledges that the landlords made efforts to ensure that the residence was liveable for her son. She also testified that she was responsible for the initial rental of this unit and was the primary party who dealt with the landlords during her son’s tenancy.

In her testimony, the tenant’s representative reiterated that she had seen the condition of the storm door from the start of the tenancy and that it had been in poor condition. The tenant’s representative also testified that the tenant (her son) did not create an inordinate amount of holes in the wall. She submitted that any holes or other minor damage to the unit were as a result of reasonable wear and tear over the course of the tenancy. She also submitted that she believed the quote for painting and repairs to the walls was excessive, beyond mere patch work. Two letters were submitted by the same witness on behalf of the tenant. Those letters indicated that she accompanied the tenant and his mother (his representative at this hearing) to the suite. One typewritten letter indicated that the rental unit was spotless but that there were a few holes where items had been hung.

Analysis

In this circumstance, the landlords sought a monetary award for damage to the rental unit as well as to retain the tenant’s security deposit in satisfaction of any monetary award. The tenant sought recovery of his security deposit and an amount equivalent to his security deposit as a result of what he claims is the landlords’ failure to return the deposit in accordance with the provisions of the *Act*.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to

comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security and pet damage deposit (section 38(6) of the *Act*).

With respect to the return of the security and pet damage deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, I find that the tenancy ended on August 31, 2015 and that the tenant's representative provided the forwarding address on that same date. In response, clearly mindful of their timeline to act, the landlords emailed the tenant's representative on September 15, 2015 indicating that they intended to retain the tenant's security deposit as a result of their costs in the repair of damage to the rental unit. However, the landlords did not apply to the Residential Tenancy Branch to retain the tenant's security deposit until March 4, 2016.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security (and/or pet damage) deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The tenant's representative on behalf of the tenant testified that the tenant did not agree to allow the landlord to retain any portion of his security deposit. This lack of agreement to allow the landlords to retain the security deposit is evidenced from the tenant's application seeking the return of that deposit as well as the correspondence between the parties at the end of the tenancy. As there is no evidence that the tenant or his representative gave the landlords written authorization at the end of this tenancy to retain any portion of his security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The tenant seeks return of his security deposit. While the landlords applied to the Residential Tenancy Branch to retain the tenant's deposit, they did so after the allowable timeline to make such an application. Given that the landlords did not return the tenant's security deposit or apply for to retain the deposit within 15 days of receiving the tenant's forwarding address, I find that the tenant is entitled to a monetary order including \$425.00 for the return of the full amount of his security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

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;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the sworn testimony and documentary evidence of the parties before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security or pet damage deposit in full within the required 15 days. The tenant's representative gave sworn oral testimony that the tenant had not waived his right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a total monetary order amounting to double the value of his security deposit with any interest calculated on the original amount only. No interest is payable for this period.

With respect to the landlords' application for a monetary award for the damage related to the storm door, I find that the landlords have provided insufficient proof that the damage to the storm door was caused by the tenant over the course of the tenancy. The tenant's representative testified that damage existed to the storm door at the outset of the tenancy. I accept her evidence with regard to the storm door and I note that the landlords were unable to provide any information with respect to the age or the condition of the door at the outset of the tenancy nor had he completed a condition inspection report at the start or end of this tenancy to document any damage. I find the landlord is not entitled to recover any costs with respect to the storm door.

With respect to the repairs to the walls as a result of nail holes, I find that the tenant is not responsible for this damage and therefore the landlord is not entitled to recover the costs for dry walling and painting. Residential Tenancy Policy Guideline No. 1 is relevant to this issue. This guideline addresses the responsibilities of landlords and tenants throughout the course of a tenancy. The section below specifically addresses walls:

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes: 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes. 2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage. 3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

I find that the photographic evidence submitted by the landlord in his claim for damage as well as the testimony of both parties shows that the tenant followed the landlord's instructions for hanging and removing pictures and that any nail holes remaining as a result of hanging pictures during his tenancy is not damage but merely reasonable wear and tear as a result of a tenancy.

As the tenant has been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's application in its entirety.

I grant the tenant a monetary award as follows,

Item	Amount
Return of Security Deposit	\$425.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	425.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$900.00

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: April 19, 2016

Residential Tenancy Branch