



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNR MNSD O OLC PSF RP SS FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for a monetary order for unpaid rent 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for a monetary order for compensation for damage or loss under the *Act* pursuant to section 67; authorization to obtain a return of his security and pet damage deposit pursuant to section 38; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; an order to the landlord to provide services or facilities required by law pursuant to section 65; an order to the landlord to make repairs to the rental unit pursuant to section 33; an order for substituted service; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:25 pm in order to enable the tenant to connect with this teleconference hearing scheduled for 1:00 pm. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. With respect to the tenant's failure to attend this hearing, Rule 10.1 of the Rules of Procedure provides as follows:

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing to support her application, I **order the tenant's application dismissed without liberty to reapply.**

Issue(s) to be Decided

Is the landlord entitled to a monetary order for loss as a result of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security and/or pet damage deposit in partial satisfaction of any monetary order? Is the landlord entitled to recover the \$50.00 filing fee for this application from the tenant?

Background and Evidence

The landlord testified that the tenant resided in this rental unit for approximately three years. She testified that the tenant vacated the rental unit on November 4, 2015. The landlord submitted a copy of the mutual agreement to end tenancy and an addendum to the mutual agreement. Both the agreement and the addendum were signed by both parties. The addendum indicated that the tenant agreed to pay rent until November 15, 2015 as compensation for short notice to vacate the rental unit. The tenant gave notice that he intended to vacate the rental unit on October 26, 2015.

The landlord testified that the tenant paid a \$697.50 security deposit and \$348.75 pet damage deposit at the outset of the tenancy, a total amount of \$1046.25. She testified that she returned \$1242.25 to the tenant by email money transfer on November 17, 2015. She testified that the additional \$196.00 reflected an amount in compensation for 7 days that repairs were ongoing within the unit. She provided documentary evidence in the form of a receipt for an email money transfer to prove that she returned these funds to the tenant. She also submitted a copy of another email money transfer from the tenant in the amount of \$497.50 for half month's rent in November 2015. She testified that the tenant agreed to pay this amount as part of the mutual agreement to end tenancy. The landlord testified that the tenant was not required to pay the remaining \$200.00 towards the half of November 2015 rent because a pipe burst in the rental unit before he vacated the rental unit. The landlord allowed the tenant to retain \$200.00 as compensation for the inconvenience related to the burst pipe and repairs.

The landlord submitted that, after payments and deductions, the tenant is required to pay her a further \$111.46 plus her filing fee for this application. She testified that the amounts paid by both parties with respect to this tenancy are as follows;

Item	Amount
Tenant's Security and Pet Damage Deposit (\$697.50 + 348.75)	-\$1046.25
November 2015 ½ month's rent paid by tenant minus \$200.00 compensation for burst pipe	-\$497.50
Landlord returns security and pet damage amount	\$1242.25
Painting costs (\$99.06 + 42.00)	141.06

Unreturned fob	75.00
Replace curtain rods	25.00
Recovery of Filing Fee for this Application	50.00

The landlord provided a copy of an invoice for materials purchased for repair of a wall and painting of a portion of the rental unit. The invoice reflects an estimate of \$236.25 to repaint the fireplace and a wall where the tenant had affixed a wine rack. She testified that she purchased the painting materials for \$99.06. She submitted a receipt for this purchase. She valued her time for painting at \$14.00 per hour, submitting that it took approximately 3 hours work to paint herself. She provided another estimate from a handyman company with a rate of \$69.00 per hour.

Analysis

The landlord submitted that the mutual agreement to end tenancy and its addendum should have sufficed to resolve this matter. However, the tenant filed a dispute resolution application for the return of his security deposit. The landlord returned \$1242.25 and the tenant did not attend this hearing. The landlord sought to recover her filing fee and a further amount with respect to repairs at the end of the tenancy. She submitted portions of the correspondence between herself and the tenant as evidence of the ultimate agreement in this matter and she suggested that an amount remained unpaid by the tenant at the end of the tenancy.

I find that the tenant and landlord underwent careful and considerate calculations of the amounts owing to each other at the end of tenancy. I find that the landlord chose to return a portion of the tenant's deposits after receiving notice of a dispute by the tenant. I find that the tenant accepted this amount and did not attend this hearing. I find that any amount sought by the landlord is negligible in the circumstances and that the landlord's application lacks sufficient detail to support her monetary claim.

I find that the tenant and the landlord resolved this matter to the best of their abilities with an appropriate outcome and that, in all of the circumstances, including the tenant's non-attendance; the landlord's reliance on an approximation of her work done outside the scope of the end of tenancy agreement; and the difficulty in assessing clearly the amounts as the landlord failed to provide a monetary order worksheet to outline her calculations in arriving at the amount she believes she is owed, I dismiss her application.

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with

enough information to know the applicant's case so that the respondent might defend him or herself.

It appears from the landlord's application and submissions that she is seeking \$111.46 relating to repairs at the end of the tenancy; however, I am not clear as to the landlord's calculations with respect to the variety of exchanges of money and negotiations between the landlord and tenant. I asked the landlord to explain the calculation and she did attempt to elaborate at this hearing. However, I find that the landlord did not sufficiently set out the details of her dispute in such a way that the tenant would have known what the landlord sought in this claim (including providing her own monetary worksheet). If the landlord was unable to clarify for me during this teleconference the amount outstanding, I am uncertain that the tenant would have understood that a further amount was being sought against him in all of the circumstances.

In these particular circumstances, where the tenant filed an application for dispute regarding his security deposit and the landlord returned the deposit shortly thereafter with reference to the previous negotiations between the parties of a mutual agreement to end tenancy, I do not find that it is appropriate or within my purview to make further findings with respect to these agreements. I find that this matter was resolved and concluded by way of agreement between the two parties.

I dismiss the landlord's application for a monetary award as the landlord has failed to particularize her claim pursuant to section 59 of the Act.

Conclusion

I dismiss the landlord's application in its entirety without leave to reapply.
I dismiss the tenant's application in its entirety 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: April 18, 2016

Residential Tenancy Branch