



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on December 15, 2015 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on October 23, 2015 for:

1. An Order to retain all or part of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to retain any portion of the security deposit?

Is the Tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy started on October 1, 2014 and ended on October 15, 2015. At the outset of the tenancy the Landlord collected \$550.00 as a security deposit. The Tenant provided its forwarding address on October 15, 2015 and the Landlord returned \$342.50 of the security deposit to the Tenant.

The Parties mutually conducted a move-in condition inspection and completed an inspection report. The Tenant states that the Parties mutually conducted a move-out inspection for approximately an hour. The Landlord left to purchase items and the Tenants left for lunch. No further inspection was carried out and the Landlord did not contact the Tenants to complete the inspection. The Landlord did not complete a move out report. The Tenant states that when they returned to the unit they sent a text to the Landlord who told them there was nothing left to do.

The Landlord states that the Tenants left a drawer off the railings and a cabinet off the hinges. The Landlord states that during the tenancy a towel rack and a toilet handle had been damaged and the Tenants said these items were damaged by regular use. The Landlord states that it was not sure how the items were damaged and made the repairs. These repairs are not being claimed. The Landlord states that the Tenants did not disagree about the damages but told the Landlord that the damages were due to poor workmanship.

The Tenant submits that the quality of materials and craftsmanship of the unit was lacking and although the unit visually appeared good at move-in, it was later discovered that several items were not completed properly, such as the toiler that would "rock" from not being properly attached, lack of a proper seal around the sink, a gouge made by the contractor on the inside cabinet door, a towel bar that was only attached on one side to the drywall and a plastic toilet apparatus that was broken. The Tenant states that a

drawer used for cutlery had come off the tracks during the tenancy and it was discovered at move-out that the screws had fallen out. The Tenant states that due to the poor workmanship the drawer was damaged simply by normal wear and tear. The Tenants state that they never saw any damaged cabinet during the tenancy or the move-out inspection.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit undamaged except for reasonable wear and tear.

I accept the Tenant's persuasive evidence that the unit was poorly constructed. There is no evidence that anything was done to cause the cupboard to come off the hinges and the evidence of the loose screws leads me to believe that the drawer was also damaged by normal usage or wear and tear. I find therefore that the Landlord has not substantiated that the Tenants left the unit with damages beyond reasonable wear and tear and that the Landlord is therefore not entitled to the costs claimed. I dismiss the Landlord's application in its entirety.

Section 36 of the Act provides that the right of the landlord to claim against a security deposit for damage to residential property is extinguished if the landlord, inter alia, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Based on the undisputed evidence that the Landlord did not complete a move-out inspection report and provide a copy to the Tenants, I find that the Landlord's right to claim against the security deposit was extinguished at move-out. The Landlord was required at this point to return the full security deposit. The Landlord still retained the right to claim against the Tenants.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Although the Landlord made its application within 15 days, as the Landlord's right to claim against the security deposit was extinguished and as the Landlord failed to return the security deposit, I find that the Landlord must now repay double the security deposit plus zero interest in the amount of **\$1,100.00**. Deducting the **\$342.50** that was returned already leaves **\$757.50** owed to the Tenant. As the Tenants' application has met with success I find that the Tenants are also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$807.50**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for **\$807.50**. If necessary, this order may be filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 13, 2016

Residential Tenancy Branch