



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with monetary applications by the landlord and the tenant. Both the landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. The tenant stated that she had received eight pages of the landlord's evidence late, and she did not have sufficient time to prepare a full response to that evidence, particularly a written statement from the current tenant. The landlord stated that this evidence was signed for. The tenant stated that it was signed for by the concierge of her building, and then the concierge informed her "one day" that it was there. I admitted the evidence, as the tenant could not provide more precise details about the date she was informed of the evidence. I will address what weight I place on the evidence, and in particular the current tenant's written statement, in the analysis portion of this decision.

Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on September 1, 2012. The monthly rent was \$1,675.00. At the outset of the tenancy, the tenant paid the landlord a security deposit of \$837.50 and a pet deposit of \$837.50. On September 12, 2012 the landlord and the tenant carried out a move-in inspection and completed the condition inspection report. The tenancy ended

on September 30, 2015. On that date, the tenant and the landlord carried out a move-out inspection and completed the condition inspection report. The landlord noted several damaged items in the unit, including scratches on the hardwood flooring; marks on the walls and scratches on a vent. The tenant signed that she agreed with the damages, and a further handwritten note on the report indicates, in regard to deductions from the security and pet deposits, "tenant and landlord will discuss further and obtain quote re: damage." The tenant also provided the landlord her forwarding address in writing on the condition inspection report. The landlord applied to keep the deposits on March 20, 2016.

Tenant's Application

The tenant applied for recovery of the security and pet deposits. The tenant stated that when she and the landlord were doing the move-out inspection on September 30, 2015 the new tenant was already moving in, because the landlord had not been available to do the inspection with her earlier. The tenant stated that she did not receive a copy of the move-out condition inspection report from the landlord until she received it in the landlord's evidence several months later. The tenant stated that she therefore could not remember if all of the boxes that are checked on the report were checked at the time she signed it.

The landlord responded that he did not add anything to the move-out condition inspection report. The landlord stated that the tenant signed agreeing to the damage noted on the report.

Landlord's Application

In his application, the landlord claimed compensation of \$26,100.50 but then amended his claim to \$25,000.00, the maximum claim allowable under the *Residential Tenancy Act*. On his monetary order worksheet, the landlord indicated that he sought \$24,370.50 for unit repairs; \$55.00 to replace a lost fob; and \$1,675.00 for loss of rent during repairs. The landlord stated in the hearing that he still wished to claim \$55.00 for the lost fob and \$1,675.00 for loss of rent, and was seeking a reduced amount for unit repairs so that his total claim would be \$25,000.00.

The landlord submitted several photographs and other evidence to show damage to the rental unit. Included is a repair quote dated February 19, 2016. The landlord stated that he was unable to obtain the quote earlier than that date, due to seasonal demand and the fact that the work would not be done immediately. The landlord stated that he was able to re-rent the unit immediately after the tenant vacated, and for a higher rent than

what the tenant paid. The landlord stated that he anticipated that the repairs would take one to two weeks, and he has claimed compensation equivalent to one month of the rent the tenant paid when she lived in the unit. The landlord also stated that the tenant did not return the fob.

The tenant responded that some of the damage was pre-existing at the beginning of her tenancy, including at least eight nails that were left in the hallway walls. The tenant stated that there were two spots of damage on the flooring that were several feet in size, which the previous tenants had caused by misusing the dishwasher. The tenant stated that the landlord's photographs are zoomed in, and the scratches on the flooring are only a few centimeters in length. The tenant stated that she signed on the condition inspection report that she was willing to discuss the painting of the unit because she did not think that she should have to be responsible for all of the painting. The tenant questioned whether the landlord had attempted to remove the red nail polish on the dryer by using nail polish remover, as opposed to claiming \$380.00 for repair and replacement of appliances.

Analysis

Tenant's Application

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security and/or pet deposits or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security and/or pet deposits.

In this case, the tenancy ended on September 30, 2015, and the tenant provided her forwarding address in writing on that date. The tenant did not give the landlord written permission to retain any specific portion of the security or pet deposits and therefore the landlord was required to either apply to keep the deposits or return the deposits. The landlord did not return the deposits and he did not apply to keep the deposits until nearly six months later. I therefore find that the tenant is entitled to recovery of double the security and pet deposits in the amount of \$3,350.00.

Landlord's Application

I find that the landlord has failed to establish his claim, with the exception of the cost for the replacement fob. I accept the evidence that the tenant did not return the fob and the landlord suffered a loss of \$55.00 as a result.

As for the remainder of the landlord's claim, I am not satisfied that all of the damage claimed by the landlord was caused by the tenant, rather than previous tenants. The landlord did not provide more than one quote or show that he had made any efforts to mitigate the repair costs with more cost-effective solutions. Moreover, given that the landlord is now receiving a higher rent than what the tenant paid, I find that the damages caused by the tenant must not be more than aesthetic damage, as the landlord was not required to seek a lower rent. I therefore dismiss the balance of the landlord's claim.

Filing Fees

As the tenant's application was successful, she is entitled to recovery of the \$50.00 filing fee for the cost of her application.

As the landlord's application was mostly unsuccessful, he is not entitled to recovery of the filing fee for the cost of his application.

Conclusion

The tenant is entitled to \$3,400.00. The landlord is entitled to \$55.00. I grant the tenant an order under section 67 for the balance due of \$3,345.00. 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: June 8, 2016

Residential Tenancy Branch