



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, MND

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The landlord's application is a request for a monetary order for \$1872.15 and a request to retain the full security/pet deposits on top of that claim.

The tenant's application is a request for a monetary order for \$3154.89 and a request for recovery of the filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

Issue(s) to be Decided

The issues are whether or not the landlord or the tenant has established monetary claim against the other and if so in what amount.

Background and Evidence

The tenant paid a security deposit of \$925.00 and a pet deposit of \$600.00 on March 17, 2013, and this tenancy began on April 1, 2013.

The parties further testified that a move in inspection was not done at the beginning of the tenancy; however one was completed on April 1, 2014 and was signed by both parties.

Landlord testified that the tenant was supposed to vacate the rental unit by the end of October 2015, however the tenant did not vacate the rental unit fully until November 2, 2015 and therefore she is requesting that the tenant pay two days rent for a total of \$126.40.

The landlord further testified that the tenant damaged two garage panels during the tenancy and removed the insulation, and an estimate to repair the damage has been given for \$1000.00.

The landlord also testified that the tenant left significant damage in the rental unit, and she's had a quote to do the repairs of the rental unit that comes to a total of \$2220.75.

The landlord further testified that the tenant refused to participate in the moveout inspection report and refused to sign the report stating that she was in a hurry did not have time to go through the rental unit with the landlord.

Landlord is therefore requesting a monetary order as follows:

two days rent for November 2015	\$126.40
Replace garage door panels and insulation	\$1000.00
Repair damages in townhouse	\$2220.75
Filing fee	\$50.00
Total	\$3397.15

The landlord is therefore requesting an order to retain the full security/pet deposit of \$1525.00 towards the claim and requests a monetary order be issued in the amount of \$1872.15.

The tenant testified that she moved out of the rental unit on October 17, 2015 and October 29, 2015 and all of her belongings, except for cleaning equipment, were out of the rental unit by that time.

The tenant further testified that she cleaned the rental unit completely on November 1, 2015 and left no damage whatsoever.

The tenant further testified that, as you can see from the move-in inspection report, there were dents in the garage door when she moved into the rental unit and she caused no further damage during the tenancy and in fact had the door repaired.

The tenant further testified that she did no damage in the rental unit, and states that you can see by the photos she supplied, that the rental unit was left clean and undamaged. The tenant further stated that she has no idea when the landlord's photos were taken as she only received them two days ago, even though the landlord's claim was filed back in November of 2015.

The tenant further testified that she had arranged to do a moveout inspection with the landlord on November 2, 2015, however when she arrived the landlord had already filled out the moveout inspection report and was not willing to allow her to go over the full report. The tenant further testified that she therefore refused to sign the report, and notes that the landlord did not sign the report either.

In response to the tenant the landlord testified that she did fill out the inspection report prior to the tenant's arrival however it was the tenant who did not want to go through the report and complete the full inspection. The tenant refused to participate and refused to sign the report, stating that she was in a rush, (a claim that the tenant denies.)

The landlord further testified that the tenant had not removed all her belongings until November 2, 2015 as there were many items in the garage, (again the claim the tenant denies).

Analysis

It is my decision that the landlord has not met the burden of proving her claims of damages against the tenant.

This tenancy began on April 1, 2013, however the move-in inspection report was not completed by the parties until April 1, 2014 and therefore I have no way of knowing what condition the unit was in at the beginning of the tenancy.

Secondly, the parties do not agree as to whether or not the tenant was offered an opportunity to participate in the moveout inspection report and since it is just the landlord's word against that of the tenant I have no way of verifying whose version of events is correct. Therefore I'm not willing to rely on the moveout inspection report to determine whether or not any damages occurred during the tenancy.

In the absence of the reliability of the moveout inspection report, I must look at any evidence that has been provided for today's hearing; however although the tenant provided all her evidence within the required timeframe, a large portion of the landlords evidence, including the photos, was not provided within the time frame required under the Residential Tenancy Residential Tenancy Act, and therefore I will not consider that evidence.

The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met. In this case it is just the landlord's word against that of the tenant and therefore it's my finding as stated above that the landlord has not met the burden of proving her claim against the tenant.

Therefore having denied the landlords full claim it is my decision that the landlord must return the tenants full security deposit and pet deposit totaling \$1525.00. I will not order that the landlord pay double the deposits, because the landlord did apply for dispute resolution within the time frame required under the Residential Tenancy Act.

Section 38 of the Residential Tenancy Act states:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenant provided the landlord with a forwarding address in writing on November 2, 2015, and the landlord applied for dispute resolution on November 17, 2015.

I also order that the landlord bear the \$100.00 cost of the filing fee paid by the tenant.

Conclusion

The landlord's application is dismissed in full without leave to reapply.

Pursuant to sections 38, 67 and 72 of the Residential Tenancy Act I have issued a monetary order for the landlord to pay \$1625.00 to the tenant. The remainder of the tenant's claim is dismissed 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: June 13, 2016

Residential Tenancy Branch