



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF
 MNSD FF

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by the Landlord and the Tenant.

The Landlord filed on May 10, 2016 seeking a \$75.32 Monetary Order for: damages to the unit, site or property; money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee.

The Tenant filed on April 15, 2016 seeking the return of double the balance of his security deposit and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by an Agent for the Landlord (the Landlord) and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord and Tenant acknowledged receipt of the application for Dispute Resolution, hearing documents and evidence served by each other. No issues regarding service or receipt were raised. As such, I accepted the Landlord's and Tenant's submission as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Is the Tenant entitled to the return of double their security deposit?
- 2) Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Tenant and a co-tenant entered into a month to month written tenancy agreement that began on September 26, 2014. Rent of \$1,450.00 plus \$40.00 for water usage was payable on or before the first of each month. On September 19, 2014 the Tenant(s) paid \$725.00 as the security deposit.

On February 25, 2016 the Tenant served the Landlord with notice to end his tenancy effective March 31, 2016. The Tenant provided the Landlord with his forwarding address on March 31, 2016 during the move out inspection.

A move in condition inspection report was completed in the presence of a Landlord and the Tenant on September 26, 2014. Both parties were represented at the move out on March 31, 2016 during which the Tenant signed the move out condition inspection report form agreeing that the report fairly represented the condition of the rental unit at that time.

The "Security Deposit Statement" section of the move out condition inspection report form was completed listing the amount of the security deposit as \$725. The Amounts to be deducted from the security deposit totaling \$668.00 were listed in this section as follows: suite cleaning (12 x 35) \$420; Refuse 2 hrs x 55 = \$110; Repair/Replacement \$75.00; key replacement \$55.00; other 5 bulbs \$8.00.

The Landlord submitted evidence in support of their monetary claim, which included in part: receipts for amounts claimed for cleaning and repairs; and a Monetary Order Worksheet. The Landlord's claim consisted of \$800.32 for: \$420.00 cleaning at \$35.00 per hour; \$220.00 for refuse removal; \$75.00 wall repair; \$8.00 for light bulbs; \$12.86 garbage bags; and \$27.50 for lock change. The Landlord had deducted the \$725.00 security deposit leaving a balance claimed of \$75.32.

The Tenant disputed the Landlord's claim and argued he had signed the Security Deposit Statement section of the move out condition inspection report form agreeing to the specific amounts listed. He asserted he expected a refund of the balance of his security deposit as he did not agree to any other deductions from his deposit.

The Tenant submitted evidence he received a letter from the Landlord threatening to take him to collections rather than the return of the balance of his deposit. He indicated the 15 day time limit had passed so he made his application to seek the return of double the balance owed from his deposit. He stated that he initially thought he was entitled to the return of \$75.32 x 2 and admitted that his math may have been incorrect when completing his application.

The Tenant read item 7 of his tenancy agreement into evidence as follows:

(c) To repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless the tenant agrees in writing to allow the landlord to keep an amount as payment for: ...

(d) If the landlord does not comply with (c), the landlord may not make a claim against the security deposit or pet damage deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both.

[Reproduced as written]

Upon review of the The "Security Deposit Statement" section of the move out condition inspection report, the Landlord asserted the amounts listed in that section were always estimated amounts which is why their staff write approximate in that section. She argued their employees who conduct the move out inspection are not aware of the actual costs involved in cleaning and repairing the unit as they are not the employees who conduct the work. Upon review of the document submitted into evidence the Landlord stated the letters written beside "Security Deposit Statement" were "APPROX" which she argued supported her submission.

The Landlord stated they stayed with the original amounts listed on the Security Deposit Statement except for the refuse removal. The Landlord argued the Tenant had left used tires on the property that had to be disposed of and which cost an additional amount of \$75.32.

The Tenant denied being told the amounts were approximate. He stated he had discussed the amounts being claimed with the Landlord who conducted the move out inspection. The Tenant asserted he did not agree to additional amounts being deducted as he was expecting a payment for the balance of his deposit.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Section 38(4) of the Act stipulates a landlord may retain an amount from a security deposit or a 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, or after the end of the tenancy, the director orders that the landlord may retain the amount.

Section 62 (2) of the Act stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

I accept the undisputed evidence that the Tenant left the rental unit requiring additional cleaning, repairs, and without returning all of the keys, in breach section 37 of the Act. Accordingly, I find the Tenant's breach caused the Landlord to suffer a loss for cleaning and repairs. That being said, after review of the "Security Deposit Statement" section of the move out condition inspection report, I favored the Tenant's interpretation that he was to receive a payment for the balance of his security deposit after the amounts listed on the "Security Deposit Statement" were deducted.

Upon review of the evidence before me, I find the Landlord and Tenant entered into a mutual written agreement of the amounts the Tenant would have to pay to compensate the Landlord for the cleaning, repairs, refuse removal, and keys, pursuant to sections 38 and 62 of the Act. I accept the Tenant's interpretation of what transpired during the move out inspection when the "Security Deposit Statement" section was completed. The Landlord's agent who completed that form with the Tenant was not present at the hearing and therefore, was not able to be cross examined as to how the amounts listed on the form were determined. The Agent who was present at the hearing argued their employees must estimate the amounts because they do not know the actual costs.

I find the word written on the "Security Deposit Statement" form appears to be "ADDROX" and not "APPROX". While that word may have been intended to read "APPROX", or approximately, the mere presence of that word on this document does not give the Landlord the authority to unilaterally decide additional amounts to be deducted from a security deposit or to change the written agreement signed by the

Tenant. Section 38(1) of the *Act* is very clear regarding the disbursement of a security deposit: either the Landlord has the Tenant's written permission to withhold a specific amount from the deposit(s) or the Landlord is required to make an application within 15 days to claim against the deposit. It would be unconscionable to allow a landlord to unilaterally change a written agreement to increase amounts charged to a tenant, after an agreement had been reached and put in writing.

After consideration of the totality of the evidence before me, I find the Landlord and Tenant agreed that \$668.00 (\$420 + \$110 + \$75.00 + \$55.00 + \$8.00) would be deducted from the Tenant's \$725.00 security deposit. Therefore, I find the Tenant's submission that the matter had been mutually agreed upon and he was to receive the balance of \$57.00 returned to him within the required timeframe to be reasonable, given the circumstances presented to me, pursuant to section 62 of the *Act*.

Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

This tenancy ended March 31, 2016 and the Landlord was provided the Tenant's forwarding address on March 31, 2016. At the time the Landlord received the Tenant's forwarding address I find, pursuant to section 62 of the *Act*, the Landlord was in possession of a security deposit in the amount of \$57.00, as the previous deposit amount had been disbursed by mutual agreement. Accordingly, the Landlord was required to return the \$57.00 to the Tenant or file for dispute resolution no later than April 15, 2016.

The Landlord did not return the \$57.00 to the Tenant and did not file their application for Dispute Resolution until May 10, 2016, 40 days after the required timeframe. Therefore, I find the Landlord has failed to comply with Section 38(1) of the *Act* and the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$725.00 deposit since September 19, 2014.

Based on the above, I find the Tenant has succeeded in proving the merits of his application and I award double the security in the amount of **\$114.00** (2 x \$57.00), pursuant to section 67 of the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

The Landlord is hereby ordered to pay the Tenant the sum of **\$214.00** (\$114.00 + \$100.00), forthwith.

In the event the Landlord does not comply with the above Order, the Tenant has been issued a Monetary Order for **\$214.00**, pursuant to section 67 of the Act. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

In addition, I find the Landlord is estopped from seeking recovery of \$75.32 for refuse removal, pursuant to section 62 of the Act. I make this finding in part because the Landlord and Tenant entered into a mutual agreement of the amounts the Tenant agreed to pay for each item including refuse removal. Had the Landlord wanted to amend or change the amounts claimed, they ought not to have completed the "Security Deposit Statement" section of the move out condition inspection report form with the Tenant, agreeing to deduct the specified amounts. Rather, the Landlord ought to have had the Tenant sign PART V agreeing or disagreeing to the report contents and filed an application for Dispute Resolution to seek a claim against the security deposit and a Monetary Order for the actual value of the loss incurred.

Based on the above, I dismiss the Landlord's application in its entirety, without leave to reapply and I decline to award recovery of their filing fee.

Conclusion

The Tenant was successful with his application and was issued a Monetary Order in the amount of \$214.00. The Landlord was not successful and their application was dismissed in its entirety.

This decision is final, legally binding, and 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 16, 2016

Residential Tenancy Branch