



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 Landlord applied on December 8, 2015 for:

1. A Monetary Order for damage to the unit - Section 67;
2. An to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on June 4, with an amendment made June 15, 2016 for:

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

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

Preliminary Matters

The Landlord states that the Landlord's hearing packages were sent to all the Tenants by registered mail to the address provided at move-out but that three of the Tenants did not collect the mail. The Landlord provided those packages in the envelopes to the RTB as evidence. The Tenant states that the Landlord provided no evidence to the Tenant in the hearing package. A review of the packages provided to the RTB by the Landlord indicates that the evidence provided by the Landlord to the RTB for its application was not included in the packages to the other three Tenants.

Rule 2.5 and 3.1 of the RTB Rules of Procedure provides that an applicant must provide copies of all evidence to be relied on at the hearing to both the RTB and the responding party. As the Landlord's evidence of hearing packages indicates that no copies of condition inspection reports, an invoice for parts, a previous Decision dated November 4, 2015, and several pages of emails and/or text communications were contained in the hearing packages to the three Tenants who did not collect the packages, I find that the Landlord did not provide copies of this evidence to any of the Tenants. As a result I decline to consider this evidence of the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Landlord entitled to the compensation claimed?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The tenancy started on July 1, 2015 and ended on November 30, 2015. At the outset of the tenancy the Landlord collected \$1,250.00 as a security deposit. The Parties mutually conducted both a move-in and move-out inspection report.

The Landlord states that the Landlord did not send the Tenants a copy of the move out report as the Landlord was under the impression that the Tenant received a copy of the move-out report at the time of the inspection. The Landlord states that he can recall that two copies were prepared and that the Tenants signed one copy and the Landlord signed the other. Alternatively the other Landlord states that the Tenant took photos of the reports at move-out. The Tenant states that no copies of the report were provided to the Tenants at any time. The Tenant states that the Landlord was twice requested by email to send the move-out report.

The Landlord states that a plastic part of a shelf was missing at move-out that had been present at the beginning of the tenancy. The Landlord states that this was replaced and claims \$29.07. The Landlord states that although the Tenant did not agree to a deduction the Landlord made this deduction from the security deposit and then returned it to Tenant AS in the hearing package. This package to Tenant AS, as provided to the RTB by the Landlord, is noted as containing the Landlord's cheque.

The Tenant states that the item claimed by the Landlord was a plastic guard that was missing at move-in and was mentioned to the Landlord who did not mark this damage. The Tenant states that they did not press the matter at the time as they did not want to have any issue with the Landlord. The Tenant states that Tenant AS and the other Tenants did not pick up their packages as they no longer wanted to deal with the Landlord. The Tenant states that they were not informed by the Landlord that a cheque was being sent to any one of them.

The Tenant states that on November 4, 2015 the electricity to the entire front half of the house was lost. The Tenant states that the Landlord was informed the same day and that it was never repaired. The Tenant states that the area without electricity included the living room and dining room and that as a result of the loss of electricity they were without the use of this space and the television all day. The Tenant states that the outlets in these areas also did not work so there was no light. The Tenant claims \$541.67.

The Landlord states that the Tenants intentionally turned off the power as the Landlord found a plug in the second bedroom after the Tenants moved out. The Landlord states that he attended the unit immediately to inspect and although the Landlord told the Tenants that an electrician would be sent the Tenants never told the Landlord when such repairs could be made.

The Tenant states that the Landlord never inspected the unit and never said anything about an electrician. The Tenant refers to a text message and a letter dated November 20, 2015 provided as evidence.

Analysis

Section 36 of the Act provides that the right of the landlord to claim against a security deposit is extinguished if the landlord 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. Although I accept that the Landlord did complete the condition inspection report, given the Landlord's varying evidence of how the Tenant obtained a copy of the report I find the Landlord's evidence to lack credibility. Further considering that no copy of the move out report was provided as evidence to the Tenant although one was provided to the RTB, I tend to prefer the Tenant's evidence that no copy was ever provided to the Tenants. As a result I find that the

Landlord's right to claim against the security deposit was extinguished and the Landlord was required to return the full security deposit to the Tenant at move-out. The Landlord still retained its right to claim for damages to the unit.

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. As the Landlord's right to make a claim against the security deposit was extinguished and as the Landlord did not return the security deposit to the Tenants in full I find that the Landlord must now pay the Tenants double the security deposit in the amount of **\$2,500.00**.

Section 7 of the Act provides that where a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the landlord or tenant must compensate the other for damage or loss that results. Although the Landlord claims an amount for a removed piece of plastic, I overall prefer the Tenant's evidence and find that the Landlord's oral evidence without supporting evidence is insufficient to establish, on a balance of probabilities, that the Tenants removed the piece of plastic. I dismiss the claim for its replacement. As this was the sole claim of the Landlord I decline to award recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

It is undisputed that the Tenants experienced a lack of electricity to the unit and that the Landlord did not repair it during the tenancy. The Landlord has no evidence to support that the Tenants caused any damage to the unit that would cause this loss and I note that no such claim was made in the Landlord's application. As a result I find that the Landlord failed to inspect and remedy the loss of electricity to the unit and that the Tenants are entitled to compensation for this loss. However I do not accept that the Tenants experienced a loss to the extent claimed as the Tenants still retained use of the unit and access to other electrical outlets. I find that the loss was more of an inconvenience for which I find the Tenants to be entitled to only a nominal sum of **\$100.00** for the Landlord's failure to repair. As the Tenant's application has met with success I find that the Tenants are entitled to recovery of their **\$100.00** filing fee for a total entitlement of **\$2,700.00**.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$2,700.00**. 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: July 08, 2016

Residential Tenancy Branch