



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$1006.58 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$840 for the return of double the security deposit.
- b. An order to recover the cost of the filing fees.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other by mailing by registered mail to where the other resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?

- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenant is entitled to a monetary order and if so how much?
- e. Whether the tenant is entitled to recover the cost of the filing fee.

Background and Evidence

On April 16, 2014 the parties entered into a 6 month fixed term tenancy agreement that provided that the tenancy would start on April 15, 2014, end on October 15, 2014 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$815 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$407.50 on April 6, 2014.

In late January 2016 the tenant gave the landlord written notice he was ending the tenancy on February 29, 2016.

The landlord arranged to conduct a Pre Move-Out Inspection on February 12, 2016. This would allow the landlord to point out problem areas. However it appears that it was not sufficiently communicated to the tenant and he refused to allow the landlord in on that date. However, the Pre Move-Out inspection was re-arranged and it was conducted on February 15, 2016. The parties acknowledge that the rental unit was not in good condition on that date. The landlord took a number of photographs.

The agent for the tenant is his mother. She testified as follows:

- Her son suffers from epilepsy and has had a number of grand mal seizures. He is not mentally ill as alleged by the landlord. The seizures have caused him to hit his head into walls and doors causing damage to the rental unit.
- She obtained the permission of the landlord to leave a truck in the parking lot and her son started to remove his belongings.
- She assisted her son with the move and the clean up.
- Tenant's witness 1 testified she is a professional cleaner and she spent 2 days starting February 20, 2016 cleaning the rental unit. The tenant produced a receipt indicating she was paid \$300 for cleaning.
- The tenant hired a carpenter to fix damaged walls, doors etc. She produced a receipt indicating he was paid \$250 for his work.
- The agent testified she was in contact with the building manager at the end of February. She kept pointing out additional problems which they fixed. The building manager assured the agent the tenant would be getting his security deposit back. She gave the tenant an additional 2 days rent free to complete the cleaning and the painting of a wall.

- The tenant had misplaced the key and she was not able to return it in early March. However, the key was found and when she went back to the rental property on March 9, 2016 she discovered a tradesperson measuring the rental unit for the purpose of installing new flooring.
- The agent for the tenant denies her son smokes marijuana although she acknowledged he smokes cigarettes.
- The rental unit was dirty when the tenant moved in.
- The agent for the tenant relies on photographs taken at the end of the tenancy which shows the rental unit in good condition.

The landlord gave the following testimony:

- The landlord is claiming for loss of rent for March 2016 in the sum of \$815 because the landlord was not able to show the rental unit given its poor condition.
- The landlord relies on the photographs taking by the building manager on February 15, 2016.
- The landlord alleged the tenant was smoking marijuana in the rental unit.
- The tenant's agent was out of town until February 28 or 29.
- The rental unit was re-rented with the new tenant taking possession on April 1, 2016.
- The tenancy agreement provides that a professional carpet cleaner must clean the carpet. The landlord incurred the expense of \$131 for the cost of carpet cleaning.
- The landlord incurred the cost of \$60 for the cost of replacing blinds.
- The carpets were replaced with laminate flooring.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the tenant damaged the mini blinds. However, the blinds were a few years old. After considering reasonable wear and tear I determined the landlord is entitled to \$30 of this claim.
- b. The landlord claimed the sum of \$131.25 for the cost of carpet cleaning. On closer examination it does not appear the landlord incurred this expense. The Monetary Order worksheet provided by the landlord indicates this sum is an estimate. The landlord included a receipt dated November 23, 2015 for the carpet cleaning on another rental unit. The landlord failed to produce an invoice or receipt for carpet cleaning at this rental unit for the period after March 2, 2016. I determined the landlord failed to prove this claim. The landlord failed to disclose in evidence in chief that they had removed the carpet and replaced it with flooring. It was only after the tenant's agent gave evidence that the landlord acknowledged this. The tenancy ended at the end of February. If the landlord incurred a carpet cleaning cost there is no reason why the actual invoice would not have been disclosed. I determined the landlord failed to prove the carpet cleaning charge and as a result this claim is dismissed.
- c. I dismissed the landlord's claim for loss of rent for March for the following reasons:
 - The tenant gave a proper notice in writing ending the tenancy on February 29, 2016 over one month ahead.
 - Little weight can be given to the photos taken by the landlord on February 15, 2015 for the purpose of determining the condition of the rental unit at the end of the tenancy. I accept the testimony of the tenant's witness #1 that she cleaned the rental unit on February 20 and 21. I am satisfied the condition of the rental was such that it could easily have been shown on that date.
 - The tenant's agent hired a carpenter to repair the walls and this was done well before the end of tenancy date.
 - The Building Manager assured the tenant's agent he would be getting his deposit back and at no time indicated they were planning to hold the tenant liable for loss of rent for March until the filing of this Application.
 - The landlord failed to present sufficient evidence to establish that she made reasonable effort to re-rent the rental unit for March 1, 2016. I am not satisfied on the facts of this case that the poor condition of the rental unit at the middle of February makes the tenant responsible for a loss of rent for March.

- The landlord did not produce any evidence that they had a prospective tenant who would move in on March 1, 2016 or shortly thereafter.
- The installation of the wood floor is not the tenant's responsibility. The tenant should not be required to pay for loss of rent during the period of time the landlord is improving the rental unit.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$30 plus the \$10 filing fee (reduced to reflect the limited success of the landlord for a total of \$40.

Security Deposit:

I ordered that the landlord may retain the sum of \$40 from the security deposit. I further ordered that the landlord pay to the Tenant the balance of the security deposit in the sum of \$367.50.

Tenant's Application:

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenant paid a security deposit of \$407.50 on April 6, 2014. I determined the tenancy ended on March 2, 2016 when the tenants completed some cleaning and painting. I further determined the tenant provided the landlord with his forwarding address in writing in January 2016. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants. However, the landlord filed an Application for Dispute Resolution within the 15 days from the end of the tenancy. As a result the tenant is not entitled to the doubling of the deposit. He is entitled to recover the balance of the security deposit.

Monetary Order and Cost of Filing fee

The tenant is entitled to the balance of the security deposit in the sum of \$367.50 for the reasons set out above. I ordered the landlord(s) to pay to the tenant the sum of \$367.50. I dismissed the tenant's claim for the cost of the filing fee as the tenant's application was premature and was not necessary for a determination of where the security deposit was to be paid.

Conclusion

In summary I determined the landlord was entitled to \$40 and could deduct that from the security deposit. I further ordered that the landlord pay to the Tenant the balance of the security deposit in the sum of \$367.50.

It is further Ordered that this sum be paid forthwith. The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible.

Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 20, 2016

Residential Tenancy Branch

