



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the *Act*;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence filed by the other party. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence filed by the other party, I am satisfied that both parties have been properly served as per sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid utilities, for damage to the unit, site or property, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background, Evidence and Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties agreed that this tenancy began on June 1, 2015 on a month-to-month basis as per a signed tenancy agreement and that it ended on February 29, 2016. Both parties agreed that the monthly rent was \$1,100.00 payable on the 1st day of each month and that a \$550.00 security deposit was paid. Both parties also confirmed that the landlord retained \$200.00 of the original deposit and returned \$350.00 to the tenant. Both parties also agreed that the tenant provided her forwarding address in writing to the landlord on February 29, 2016.

The landlord seeks a monetary claim of \$380.57 which consists of:

\$280.57	Unpaid Hydro
\$100.00	Room Paint (paid to new tenants)

The landlord provided affirmed testimony that after the tenant vacated the rental unit the landlord found damage to the rental unit requiring painting of the walls due to the tenant placing stickers on the walls. The landlord also stated that the rental unit was left by the tenant with a scorched stovetop, scratches on the floors, a broken blind and 4 missing lightbulbs. The tenant confirmed that the rental unit was left in this manner and conceded the landlord's claims and accepts the \$380.57 claim made by the landlord.

The tenant seeks a monetary claim of \$1,100.00 which consists of:

\$200.00	Return of part of the Original Security Deposit
\$550.00	Compensation under Sec. 38(6) landlord fail to comply

The tenant stated that the landlord failed to return all of her \$550.00 security deposit by only returning \$350.00 as the landlord held the remaining \$200.00 in dispute of the landlord's damages claim without permission of the tenant.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

Based upon the undisputed affirmed evidence of both parties, I find that the landlord failed to return the entire \$550.00 security deposit within 15 days after the end of tenancy or when the landlord received the tenant's forwarding address in writing on February 29, 2016. The tenant is entitled to the return of the original \$200.00 security deposit held by the landlord. I also find that the landlord having withheld this amount without permission under section 38 (1) is subject to section 38 (6) of the Act and is liable to an amount equal to the value of the security deposit of \$550.00.

The tenant has established a total monetary claim of \$750.00. The tenant is also entitled to recovery of the \$100.00 filing fee. The landlord has established a total monetary claim of \$380.57. The landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

In offsetting these claims, I grant the tenant a monetary order for \$369.43.

This order must be served upon the landlord. Should the landlord fail to comply, 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: August 23, 2016

Residential Tenancy Branch