



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MDSD & FF

Introduction

The Tenant seeks monetary order for double the security deposit.

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

- a. A monetary order in the sum of \$4677 for loss or rent and cost of cleaning.
- b. An order to retain the security deposit
- c. An order to recover the cost of the filing fee

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 was filed by the Tenant was served on the Landlord by mailing, by registered mail to where the landlord resides on April 13, 2016. I find that the Application for Dispute Resolution filed by the Landlord was served on the Tenant by mailing, by registered mail to where the Tenant resides on July 15, 2016. 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 tenant is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to a monetary Order and if so how much?

- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on June 1, 2012, end on May 31, 2013 and become month to month after that. The rent is \$1800 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$900 on May 6, 2012.

On November 14, 2015 the tenant gave notice she was vacating the rental unit at the end of December 2015. The tenant(s) tenant vacated the rental unit on December 31, 2015. The Tenant gave the landlord her forwarding address in writing on or about February 25, 2016.

The landlord did not conduct a Condition Inspection at the start or end of the tenancy and failed to prepare the required Condition Inspection Reports..

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.

The Application for Dispute Resolution filed by the Tenant did not claim for doubling of the security deposit. However, Policy Guideline #17 includes the following:

- 3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit¹⁵:
 - if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act¹⁶;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

At the hearing the Tenant stated she wished to claim the doubling of the security deposit.

Analysis

The tenants paid a security deposit of \$900 on May 6, 2012. I determined the tenancy ended on December 31, 2015. I further determined the tenants provided the landlord with their forwarding address in writing on February 25, 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 and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing.

As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$1800. The Application for Dispute Resolution filed by the Tenant did not make a claim for the cost of the filing fee and as a result no such award was made.

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. The landlord failed to present photographs of the condition of the rental unit and failed to carry out a Condition Inspection or prepare a Condition Inspection

Report.. However, despite these limitations I determined the landlord to be a credible witness.

Monetary Order and Cost of Filing fee

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

- a. I determined the landlord has established a claim in the sum of \$800 for the cost of cleaning. She produced an invoice provided to her from the cleaning lady indicating she had 32 hours at \$25 per hour. The landlord did not claim for the cost of her labour. The landlord testified a major problem they faced with deal with heavy tobacco and cooking grease on all surfaces. The tenant did not deny there was smoking in the rental unit. The invoice presented was over 2 pages in length setting out the work that she did. I am satisfied the tenant failed to properly clean the rental unit and this is a reasonable claim.
- b. I determined the landlord is entitled to \$277.29 for the cost of cleaning supplies, paint supplies and other smaller items that the tenant failed to upon vacating the rental unit.
- c. I determined the landlord failed to prove that she is entitled to claim the sum of \$3600 for loss of rent for 2 months. The tenant gave proper notice she was vacating at the end of December. The landlord failed to prove she attempted to advertise the rental unit for a possession date starting January 1, 2016. The landlord did not return from vacation until January 5, 2016. The invoice from the cleaner suggests the work was completed from January 21-25. The landlord testified this is not correct and the cleaner started working on January 2, 2016. The landlord failed to provide a satisfactory explanation as to why the work was not completed in the first 4 days of January rather than spreading it over the entire month. The rental unit was not re-rented until early February with a possession date of March 1, 2016. The landlord failed to prove the delay in re-renting was the responsibility of the Tenant rather than the limited rental market that existed at that time. As a result the claim for loss of rent is dismissed.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$1077.29 plus the \$100 filing fee for a total of \$1177.29.

Analysis - Monetary Order and Cost of Filing fee:

The tenant has established a monetary claim against the landlord in the sum of \$1800. The landlord has established a monetary claim against the Tenant in the sum of \$1177.29. After setting off one claim against the other I ordered that the landlord pay to the Tenant the sum of \$622.71.

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

Should the respondent 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: August 24, 2016

Residential Tenancy Branch