



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, O

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 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; and
- authorization to recover his 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 his 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 that the notice of hearing package and the submitted documentary evidence was served to the other party via Canada Post Registered Mail. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence in this manner. I accept the undisputed affirmed evidence of both parties and find that both parties are deemed served with the notice of hearing package and the submitted documentary evidence as per section 90 of the *Act*.

Section 72 of the *Act* addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the *Act* does not provide for the award of costs associated with litigation to either party to a dispute.

Accordingly, both the Landlord's and the tenant's claims for recovery of litigation costs (Registered Mail Fees) are dismissed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation 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 money owed or compensation and recovery of the filing fee?

Background and Evidence

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.

This tenancy began on April 1, 2015 on a fixed term tenancy until December 15, 2015 as shown by the submitted copy of the signed tenancy agreement dated March 14, 2015. The monthly rent was \$1,000.00 payable on the 1st day of each month and a security deposit of \$500.00 was paid on April 1, 2015.

Both parties agreed that no condition inspection report for the move-in or the move-out were made.

The landlord seeks a monetary claim of \$401.88 which consists of:

\$262.50	Cleaning
\$39.38	Late availability of rental and inconvenience
\$100.00	Recovery of Filing Fee

The landlord states that as part of the tenancy agreement, an addendum was agreed upon by both parties. It states in part,

The tenant agrees to pay the cleaning fee at the end of the rental period (after Dec. 2015). Cost will be a minimum of \$175 but may exceed that amount depending upon the condition of the condo unit.

Both parties agreed that this condition was signed and dated by both parties on March 24, 2015 between the tenant and the original owner/landlord.

The landlord has provided a copy of an invoice from the property management company dated December 15, 2015 totalling, \$262.50. It lists a housekeeping fee for owner clean of \$175.00, a house keeping for carpets of \$75.00 and GST-Incidentals for each.

The tenant confirmed signing the agreement with the previous landlord, but disputes this claim stating that the rental unit was left clean not requiring any other services. The tenant stated that his general housekeeping was performed by the same property management company as that used by the landlord. The landlord was unable to provide any evidence that the rental unit was dirty and required cleaning. The landlord instead relies upon the above noted addendum to the signed tenancy agreement.

The landlord also seeks \$39.38 based upon a 15% charge/inconvenience charge as the rental unit was not available when he attended to take possession of the rental unit. The landlord clarified that he had to arrange with the property management company to clean the rental unit after the tenant moved out on December 15, 2015.

The tenant seeks a monetary claim of \$801.88 which consists of:

\$307.88	Return of Original Security Deposit held back by landlord
\$500.00	Compensation re: Sec. 38(6) Landlords failure to comply

Both parties agreed that the landlord withheld \$307.88 without the permission of the tenant or an order from the Residential Tenancy Branch authorizing the landlord to retain this disputed amount. Both parties confirmed that the tenancy ended on December 15, 2015 and that the tenant had provided his forwarding address in writing in a letter dated December 15, 2015.

The landlord claims that the tenant has extinguished his right to compensation under section 38 (6) as the tenant failed to participate in a condition inspection report as per section 36. The landlord states that two opportunities were given to the tenant in an email dated December 14, 2015 where the dates January 15 (evening) and 16th (next morning) were offered to the tenant. The tenant disputes this stating that he responded in an email dated December 14, 2015 that he would be available at noon or later between 330-430pm. The tenant clarified that he was leaving town and would not pay for a night in the hotel to conduct the inspection at a later time. When asked, the landlord provided testimony that he did not give notice of a final opportunity to conduct

an inspection to the tenant. The landlord stated that no further communication was made with the tenant regarding a move-out condition inspection report.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The landlord's claim is subject to the addendum clause which both parties agreed was entered into at the beginning of the tenancy. However, Residential Tenancy Branch Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states in part,

This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities¹.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. **The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.** The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. **The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises)², or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).**

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or

not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

In this case, the landlord has not presented any evidence that the rental unit required additional cleaning. The tenant has provided undisputed affirmed evidence that the rental unit was left clean. The landlord relies solely on the addendum condition that the tenant must pay to have the rental unit professionally cleaned. As such, I find that although both parties confirmed that this addendum condition was cleaned, the landlord has failed to establish the claim for professional cleaning above and beyond normal standards of cleanliness. The landlord's monetary application is dismissed.

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.

In this case, both parties have confirmed that the landlord withheld \$301.88 from the original security deposit without the permission of the tenant. The landlord has also confirmed that he did not receive permission from the Residential Tenancy Branch to withhold the disputed amount.

However, the landlord has stated that the tenant extinguished his right to the security deposit in failing to participate on 2 opportunities given to perform a condition inspection report. This was disputed by the tenant. Both parties relied upon an email exchange in which the landlord offered 2 dates to perform a condition inspection report for the move-out after the tenant had vacated. The tenant had replied to the landlord indicating that he was leaving town and that the late night or next day inspection was not possible. The landlord provided undisputed affirmed testimony that he did not communicate further with the tenant regarding this or provide a notice of a final opportunity to conduct a condition inspection report. As such, I find that the landlord has failed to establish that the tenant extinguished his right to the security deposit.

I find that the tenant has established a total claim of \$801.88 for:

\$301.88	Return of Original Security Deposit held back by landlord
\$500.00	Compensation re: Sec. 38(6) Landlords failure to comply

The tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's application is dismissed without leave to reapply.
The tenant is granted a monetary order for \$851.88.

This order must be served upon the landlord. Should the landlord fail to comply with the 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 30, 2016

Residential Tenancy Branch