



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MND, MNR, MNSD, MNDC

Introduction and Preliminary Matter

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession, a Monetary Order for damage to the rental unit, unpaid rent, and for money owed or compensation for damage or loss under the *Residential Tenancy Act*, authority to retain the security deposit and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord confirmed that the Tenant had vacated the rental unit such that an Order of Possession was no longer required.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated as follows: the tenancy began on March 1, 2016 for a fixed eight month term; monthly rent was payable in the amount of \$500.00; and, the Tenant paid a security deposit in the amount of \$250.00.

The Landlord confirmed that he did not complete a move in condition inspection report. He stated that he did not perform an inspection because the previous renter had left the key outside, and before he had a chance to go in and do the inspection the Tenant had already moved in. He claimed this was the first time this had ever happened and acknowledged that he was aware of the consequence of failing to perform a move in condition inspection.

The Landlord stated that the Tenant moved out at the end of March 2016 and that he was only given two days prior to the Tenant vacating the rental unit that the Tenant intended to move out. The Landlord confirmed that he was able to re-rent the unit for April 15, 2016 such that he sought compensation for half a month's lost rent.

The Landlord testified that he also did not do a move out condition inspection report.

The Landlord also sought \$50.00 in compensation for repairs necessitated by writing on the walls he claims was done by the Tenant.

In response to the Landlord's claims the Tenant testified as follows

He confirmed that he wrote on the walls but was prevented from repairing and repainting the walls as his key did not work as of March 29, 2016 (the day he told the Landlord he was moving out).

The Tenant further testified that he moved out of the rental unit due to its condition. He stated that the walls were significantly damaged by the previous tenant, that the unit was very moldy and had an unpleasant smell and that the rental unit was insufficiently heated by baseboard heaters. The Tenant stated that the Landlord provided a space heater, but the rental unit continued to be freezing and unlivable.

The Tenant conceded that he signed the fixed term tenancy agreement but claimed what he agreed to and what he received were not the same.

In reply the Landlord confirmed that the rental unit had been painted a year prior to the tenancy beginning. The Landlord further confirmed that the condition in which the rental unit was left by the previous renter was “normal wear and tear” from pictures being hung up on the walls and that there was no writing.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove his claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In the case before me the Landlord seeks compensation for rent owing for half of April 2016. The residential tenancy agreement provides that the tenancy was for a fixed eight month term. The Tenant vacated the rental unit after only one month of occupation. In doing so, he breached the tenancy agreement and is potentially liable for the loss of rent suffered by the Landlord for the balance of the eight month term. Fortunately, the Landlord was able to re-rent the unit as of April 15, 2016 such that only half of one month’s rental revenue was lost.

Based on the foregoing, I find the Landlord is entitled to be compensated for **\$250.00** representing loss of one half month’s rent.

I will now turn to the Landlord’s claim for \$50.00 for the cost to repair and repaint the rental unit due to the Tenant’s writing on the walls.

The Tenant admitted to writing on the rental unit walls. He claimed that the walls were damaged by the previous renter in that she left several holes from hanging art and pictures. He also claims he was prevented from repairing the damage as he was unable to access the rental unit as of March 29, 2016, the date he informed the Landlord he intended to end the tenancy.

The Landlord testified that the rental unit had been painted approximately one year prior to the start of the tenancy.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant damaged the walls by writing on them. I accept the Landlord's evidence that the walls had been painted a year prior to the tenancy beginning and that the cost to repair and repaint the walls was \$50.00. Accordingly I grant him compensation in the amount of **\$50.00**.

I will now address the Landlord's request to retain the Tenant's security deposit.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

By failing to perform an incoming condition inspection report the Landlord has extinguished his right to claim against the security deposit, pursuant to section 24(2) of the *Act*.

Although the Landlord applied for dispute resolution within 15 days of the end of the tenancy, he had no right to claim against these funds. Consequently, the Landlord has breached section 38 of the *Act*.

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an Order from an Arbitrator or the written agreement of the Tenant. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. Accordingly, I Order that the Tenant is entitled to **\$500.00** representing double the security deposit paid.

As the Landlord has enjoyed divided success in this hearing, I grant him recover of \$50.00 representing one half of the filing fee paid for a total of **\$350.00**.

Conclusion

The amounts awarded to the parties (Landlord: \$350.00; Tenant: \$500.00) are to be offset against one another such that the Tenant is entitled to **\$150.00** and is granted a Monetary Order for this sum. The Tenant must serve a copy of this Order on the Landlord and may file and enforce the Order in the small claims division of the Provincial 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 31, 2016

Residential Tenancy Branch