



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF; MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit 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 the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and tenant attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested? If not, are the tenants authorized to obtain a return of all or a portion of the security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on August 1, 2013 on a month-to-month basis. Rent in the amount of \$840.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$412.00 at the start of the tenancy. The parties agreed the tenant provided notice to vacate and forwarding address in writing, to the landlord on November 29, 2015. The parties further agreed a written condition inspection report was not completed at the start or end of the tenancy. The tenant vacated the rental unit on December 22, 2015.

The landlord is seeking \$620.20 in damages.

Table and chairs

The landlord testified that the tenant failed to leave the pre-existing table and chairs upon vacating the rental unit and therefore seeks the replacement cost. The landlord acquired an estimated replacement cost from a local furniture retailer in the amount of \$397.95. The landlord acknowledged the table and chairs have not been replaced to date.

The tenant described the table as a folding card table with little or no value. The tenant testified that he was under the impression the table was left behind and could be disposed of. The tenant explained that at one point he tried to sell the table but was unsuccessful so he gave the table away for free.

Locksmith

The landlord testified that the tenant did not return the main apartment complex key or rental unit key. The landlord had a locksmith change the rental unit lock, main apartment complex lock and cut 25 new keys for the remaining residents of the apartment complex. The landlord provided a locksmith invoice dated February 15, 2016, in the amount of \$222.25.

In relation to the keys, the tenant testified that he called the landlord a few times to arrange to return the keys but was unsuccessful. The tenant is unsure what he did with the keys, but estimates he likely threw them out.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Landlord

Table and chairs

Although the landlord provided an estimate to replace the table set, I find this portion of the landlord's claim premature as the table has not been replaced to date. Therefore, I dismiss this portion of the landlord's claim.

Locksmith

As per *Residential Tenancy Policy Guideline* ("*RT Policy Guideline*") a tenant must return all keys at the end of the tenancy. Based on the tenant's admission and the *RT Policy Guideline* I find that the landlord is entitled to the reimbursement of the locksmith fee in the amount of \$222.25.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application, for a total award of \$272.25.

Tenant

Security Deposit

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. The tenant may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization from the tenant, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

I find the tenancy ended according to the date of the submitted locksmith invoice of February 15, 2016. In this case, the landlord did not file an arbitration application to retain the deposit within the fifteen days of the tenancy end date, the landlord did not

return the deposit and the landlord did not receive written authorization to retain it. Based on this, I find the tenant is entitled to double the value of his security deposit in the amount of \$824.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Set Off of Claims

The landlord has established a damage claim therefore in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$272.25 of the \$824.00 security deposit in full satisfaction of the monetary award. The tenant is entitled to the remaining \$551.75 security deposit balance and \$100.00 filing fee for a total award of \$651.75.

Conclusion

The landlord is entitled to \$272.25 in damages. I order the landlord to retain \$272.25 from the security in full compensation of this amount. The tenant is entitled to the return of the balance of the security deposit. I therefore grant the tenant a monetary order for the balance of the deposit, in the amount of \$551.75 and the filing fee in the amount of \$100.00 for a total of \$651.75.

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: September 16, 2016

Residential Tenancy Branch