



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on May 17, 2016 for:

1. An Order for the return of the security deposit - Section 38;
2. An Order for the Landlord's compliance - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on September 2, 2016 for:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant states that Landlord DJ was served with the application for dispute resolution by registered at the professional business address of Landlord AJ and that it was returned.

Section 89 of the Act provides that, unless differently ordered, an application for dispute resolution must be given to a landlord in one of the following ways:

- by leaving a copy with the person;
- if the person is a landlord, by leaving a copy with an agent of the landlord;

- by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

As Landlord DJ was not served by any of the above approved methods, I find that the Tenant has not served Landlord DJ and that the application against this person is dismissed.

Issue(s) to be Decided

Was the Landlord required to return the full security deposit to the Tenant?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The tenancy started on November 1, 2003 and ended on April 30, 2016. Rent of \$1,350.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$525.00 as a security deposit. No move in condition inspection was carried out. On April 30, 2016 a move-out inspection was conducted. The Tenant provided it forwarding address to the Landlord prior to June 2, 2016 and on June 2, 2016 the Landlord returned \$179.00 of the security deposit to the Tenant.

The Landlord states that the Tenant left the laundry closet door knob broken. The Landlord states that the Tenant left the kitchen drawer with a missing inset. The Landlord states that the doors and drawers are original to the 15 year old building. The Landlord states that the Tenant left the wall damaged by picture hanging. The Landlord states that the Tenant left shelves out of the bedroom closet that has previously been attached to the walls in 2014. The Landlord claims \$283.00 for the repairs of these items.

The Tenant states that the building was original in 1996. The Tenant states that there was nothing wrong with the knob at move-out and that the Landlord has not provided any photo of a broken knob. The Tenant states that the drawer just fell off and that the Tenant would just simply replace it, the Tenant states that this occurred several times and that the Landlord had fixed it once several years prior. The Tenant states that the Tenant did nothing to cause this damage. The Tenant states that the picture holes were all patched by the Tenant and that the entire wall did not require painting or sanding. The Tenant states that the Landlord provided no

photo of any damaged wall. The Tenant states that the closet shelves were removed when the closet was painted by the Landlord's contractor in 2014 and that the shelving was never put back. The Tenant states that she believes that the closet wall was ruined by the removal of the shelves preventing their replacement. The Tenant states that this part of the closet was never used by the Tenant as a result. The Tenant states that she did at one point attempt to raise this problem with Landlord DJ but was told by Landlord AJ not to talk to the other Landlord.

The Landlord states that the Tenant broke a flood light fixture and claims \$11.54 for its replacement. The Tenant states that when the Tenant previously changed the lightbulb for this fixture the light would work. The Tenant states that the Landlord fiddled with it and got it to work. The Tenant does not know how the fixture was broken but suspects that it did not work as it has lived its useful life. The Landlord clarifies that the fixture was not broken and that it did not work so a new fixture was purchased.

The Landlord states that the Tenant broke the plastic shield covering a florescent light and that when the landlord went to replace the lightbulb the ballast no longer fit and a new ballast was required. The Landlord claims \$13.30 and \$56.17 for the repairs and replacements in relation to the florescent light. The Landlord states that the florescent light shield and ballast is original to the building. The Tenant states that the plastic shield was not broken at move-out and notes that the Landlord has not provided any photo of such damage. The Tenant states that she never touched the florescent light during the tenancy and that the last light change was done by the painter in 2014.

The Landlord states that legal fees of \$367.20 were incurred by the Landlord for attempting to negotiate a settlement with the Tenant and the Landlord claims this amount.

Analysis

Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make at least two offers for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. Based on undisputed evidence that no move-in inspection and report was completed I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord's right to claim against the security deposit was extinguished at move-in, I find that the Landlord was required to return the full amount of the security deposit to the Tenant. As the Landlord did not I find that the Landlord must now repay double the security deposit plus **\$18.59** interest for a total amount of **\$1,068.59** ($525 \times 2 + 18.59$). As the Tenant has been successful with its claim I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,168.59**. Deducting the **\$179.00** already returned by the Landlord leaves **\$989.59** owed by the Landlord to the Tenant.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

There is nothing in the Act that requires a party to settle a dispute through negotiation. As the claim in relation to the Landlord's legal fees for attempted settlement is not a claim in relation to any breach of the Act or tenancy agreement I dismiss this claim.

As there are no photos to support any damage to the wall or the knob and considering the Tenant's credible evidence of age of the unit I find that the Landlord has not substantiated that the Tenant damaged these items. As picture hanging holes are only considered reasonable wear and tear I find that the Landlord has not substantiated that the Tenant caused any damage to the wall. Whether or not the Tenant caused the damage claimed to the closet or kitchen drawer as the Landlord's invoice does not distinguish costs between the items claimed damaged, I find that the Landlord has not substantiated the costs claimed of \$283.50 and I dismiss this claim.

Given the original age of the fixtures in the unit I find that the Landlord has not substantiated that the Tenant caused any damage to the light fixture or the florescent lighting beyond reasonable wear and tear and I dismiss the claims for the costs to repair these items. As none of the Landlord's claims have been successful I dismiss the claim for recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$989.59**. If necessary, this order may be filed in the Small Claims 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: November 18, 2016

Residential Tenancy Branch