



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, 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, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("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 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 tenant, the landlord and the landlord's legal counsel (collectively the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Each party confirmed that they had received the other party's application. In accordance with sections 89 and 90 of the *Act*, I find that the parties were duly served with the applications.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested? If not, is the tenant 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

While I have turned my mind to all the documentary evidence, including invoices, letters, photographs, emails, sale listings, reports and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on December 5, 2014 on a fixed term tenancy until May 5, 2016. The tenant remitted a security deposit in the amount of \$1,000.00 at the start of the tenancy. Rent in the amount of \$2,000.00 was payable on the fifth of each month.

The tenant vacated the rental unit on May 5, 2016 and as per the parties testimony, the rental unit was re-occupied by a friend of the landlord's this same date. The landlord acknowledged this friend remained in the rental unit until the end of May at which time the rental unit became vacant until August 2016. The landlord testified that in August another friend of the landlord's commenced occupancy of the rental unit until the sale was completed on October 26, 2016.

The parties agreed that a written condition inspection report was not conducted at the start or end of tenancy.

Landlord Claims

After the tenant's vacancy, the landlord concluded that the tenant had been subletting the rental unit without authorization and had failed to maintain and repair the rental unit as required under the signed tenancy agreement. As a result, the landlord testified that he is seeking \$25,000.00 in damages, including the following:

Item	Amount
Repair Gas Stove	\$174.50
New Sink	\$332.50
Lighting, Closet Knob, etc.	\$341.31

Carpet Cleaning	\$600.00
Pest Control	\$500.00
Insurance Deductible	\$2,500.00
Sale Loss	\$20,551.69
Total Monetary Order	\$25,000.00

The landlord has submitted receipts for the first three monetary claims above and has provided his estimation of pest control costs.

Insurance Deductible

The landlord testified that on December 3, 2015 there was a fire in the rental unit. An insurance claim was filed and the landlord incurred the cost of the deductible in the amount of \$2,500.00.

Loss Incurred by Landlord upon Sale

In order to complete the sale of the rental unit, the landlord had to repair a number of deficiencies within the rental unit. The landlord testified that because the tenant failed to maintain reasonable health, cleanliness and sanitary conditions throughout the rental unit or make the necessary repairs, as per the signed tenancy agreement the tenant is responsible for the loss the landlord suffered in the sale of the rental unit. The landlord provided comparable unit listings in the same neighbourhood in an effort to support his claim.

Tenant Reply and Claims

The tenant denied subletting or failure to maintain the rental unit. The tenant testified that the landlord was frequently out of the country and left an agent to deal with tenancy issues. The tenant testified that she reported the rodent issue to the agent and this remained unresolved. The tenant acknowledged responsibility of a fire and is agreeable to paying the insurance deductible. The tenant agreed she did not shampoo the carpets at move-out.

The tenant seeks reimbursement of her May rent cheque that was cashed by the landlord and the return of her security deposit. The tenant testified that she provided her forwarding address in writing on May 5, 2016 to the agent.

Item	Amount
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May Rent	\$2,000.00
Security Deposit Doubled	\$2,000.00
Total Monetary Order	\$4,000.00

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.

Landlord Claims

In this case, the onus is on the landlord to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Gas Stove, Sink, Lighting, Closet Knob

Upon review of the submitted receipts, sale listings, house inspection and photographs I conclude that in the absence of a move-in or move-out inspection report detailing the condition of the rental unit at the start and end of tenancy, the landlord has failed to substantiate his claim that the tenant failed to maintain the rental unit and was therefore responsible for the following damages: repair gas stove, new sink, lighting and closet knob. The receipts are dated well after the tenancy and two other occupancies, the sale listings have a general description of the unit, not a breakdown of damages, the house inspection was conducted on September 22, 2016 well after the tenancy and two other occupancies and the photographs are either undated or part of the September 22, 2016 house inspection. For these reasons, I dismiss this portion of the landlord's claim.

Carpet

Residential Tenancy Policy Guideline #1, establishes that after a year of tenancy, a tenant is responsible for shampooing the carpets. Based on the tenant's acknowledgement that this was not completed at move-out, I find the landlord is entitled to a monetary award for carpet cleaning. Because the receipt includes general cleaning and is dated October 23, 2016 well after the tenant and two other occupancies, I grant

the landlord a nominal award in the amount of \$200.00 for the carpet cleaning. The landlord is not entitled to recover the cleaning amount as he has failed to substantiate any claim that the tenant left the unit in a state other than clean.

Pest Control

Although the landlord has proven the existence of expired rodents within the rental unit, the landlord has failed to verify the cost of pest control with a receipt or estimate from a professional. Therefore, I dismiss this portion of the landlord's claim.

Insurance Deductible

As the tenant did not deny this damage, I find the landlord is entitled to recover the \$2,500.00 insurance deductible from the tenant.

Sales Loss

The landlord has provided testimony that the tenant sublet the rental unit and neglected to maintain the rental unit whereas the tenant provided testimony that she did not sublet the rental unit she merely had family stay with her on occasion, any deficiencies were reported to the landlord's agent and she was not responsible for any damage. Although the landlord provided mail addressed to what he referred to as "sub-tenants", he provided no other documentary evidence to substantiate his claim of subletting. The landlord did not conduct a move-in or move out inspection report and had two other occupants in the rental unit before any damage was documented.

When one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Therefore, the landlord's claim fails on the second part of the burden of proof test above. The landlord cannot establish that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act, Regulation* or tenancy agreement. Accordingly, I dismiss the landlord's application for a monetary order of \$20,551.69 for loss incurred upon the sale of the rental unit, without leave to reapply.

Tenant Claims

The parties agreed the tenant vacated the rental unit on May 5, 2016 and the landlord did not dispute cashing the May 5, 2016 rent cheque. Based on the undisputed testimony of the tenant I find the tenant is entitled to recovery May rent in the amount of \$2,000.00.

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.

Although the tenant testified that she provided a forwarding address to the agent on May 5, 2016, she did not provide a copy of this letter. In the absence of the letter, I find the tenant has not met the burden of separate written notice. Accordingly, I dismiss this portion of the tenant's application.

Filing Fee

As both parties were partially successful in their applications, I award them each \$50.00 of the \$100.00 filing fee paid.

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 \$2,750.00 of the \$1,000.00 security deposit in partial satisfaction of the monetary award and find the tenant responsible for the balance due \$1,750.00.

Item	Amount
Carpet Cleaning	\$200.00
Insurance Deductible	\$2,500.00
Filing Fee	\$50.00
Security Deposit	(\$1,000.00)
Total Monetary Order	\$1,750.00

The tenant has established a claim of \$2,050.00 for May rent and the filing fee.

Item	Amount
May Rent	\$2,000.00
Filing Fee	\$50.00
Total Monetary Order	\$2,050.00

Setting off the amounts owed (\$2,050.00 – \$1,750.00) I order pursuant to section 67 of the *Act*, that the landlord pay the tenant \$300.00.

Item	Amount
Landlord Claim	\$1,750.00
Tenant Claim	\$2,050.00
Total Monetary Order	\$300.00

Conclusion

After setting off the claims made against each other and accounting for the security deposit paid, I find the landlord owes the tenant **\$300.00**, and a monetary order has been granted to the tenant in those terms.

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: December 15, 2016

Residential Tenancy Branch