



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, MNSD, 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 June 27, 2016 for:

1. An Order for the return of double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on August 11, 2016 for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. 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.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started in October 2015 and ended on May 31, 2016. Rent of \$900.00 was payable monthly. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. No move-in or move-out condition inspection reports were completed. The Tenant provided its forwarding address to the Landlord on May 31, 2016.

The Landlord has not returned the security deposit and the Tenant claims return of double the security deposit.

The Landlord states that the Tenant damaged the walls of the kitchen and hallway by leaving 1cm holes in the walls. The Landlord states that the Tenant damaged a kitchen closet by leaving them stained. The Landlord states that he painted the kitchen and replaced the closets himself taking 15 hours to complete the work. The Landlord claims \$206.30 in paint supplies. The Landlord provided a receipt for these costs. The Landlord claims \$175.00 for the replacement of the kitchen closet. No invoice was provided for these costs. The Landlord claims \$157.00 for his labour costs at \$10.45 per hour. The Landlord provided photos.

The Tenant states that there was only one hole on a wall beside a light fixture and that this hole was present at move-in. The Tenant states that there was nothing wrong with the kitchen closet and that the Tenant did not leave it with any stains.

The Landlord states that the Tenant was given a pvr box to use for the tenancy as cable was included in the rent and that the Tenant did not leave the pvr at the end of the tenancy. The Landlord states that he purchased the pvr on June 2, 2015 from a cable provider and provides a copy of a statement of costs for a pvr from this provider. The Landlord claims \$490.00. The Tenant states that a pvr was never seen in the unit and that no pvr was used. The Tenant states that they did not watch tv and only used a password for the wifi. When asked about the email evidence of the Landlord in relation to the pvr the Tenant stated that they had their own pvr but did not use it.

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 an offer 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 the undisputed evidence that no condition inspections were 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 did not return the security deposit to the Tenant within 15 days receipt of the forwarding address I find that the Landlord must pay the Tenant double the security deposit plus zero interest in the amount of **\$900.00**. 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 **\$1,000.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. 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. Given the lack of any condition reports, considering the Tenant's evidence that wall holes were either non-existent at the end of the tenancy or were present at the outset of the tenancy, the lack of any visible stains in the Landlord's photos of the kitchen closets and the Tenants denial of any stains, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the damage to the walls or kitchen closet and I dismiss the claims for the costs to repair and replace along with the claims for the Landlord's labour.

As the Tenant's evidence about the pvr did not hold a ring of truth I prefer the Landlord's evidence and find that the Tenant failed to leave the pvr in the unit at move-out.

Accepting the Landlord's evidence of pvr cost I find that the Landlord is therefore entitled to compensation of **\$490.00** as claimed. As the Landlord's application has been partially successful I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$590.00**. Deducting the Landlord's entitlement from the Tenant's entitlement leaves **\$410.00** owed by the Landlord to the Tenant.

No claim was set out in the monetary order worksheet for any amount of unpaid rent and no evidence was given by the Landlord to support this claim. I therefore dismiss the claim for unpaid rent or utilities.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$410.00**. 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: December 23, 2016

Residential Tenancy Branch