



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, 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, and for money owed or compensation for damage or loss under the Act, 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 his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on July 7, 2016. The tenant confirmed receiving the package and the submitted documentary evidence in this matter as claimed by the landlord. The tenant did not submit any documentary evidence. I accept the undisputed evidence of both parties and find that the landlord did properly serve the tenant with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

After some clarification the landlord stated that he seeks a total monetary claim of \$1,472.50 as listed in his monetary worksheet. The landlord stated that the total monetary claim of \$1,272.50 was a mathematical error in which he included an advance deduction of the \$250.00 security deposit. The tenant stated that he understood and gave no objections. The hearing shall proceed on the landlord's monetary claim of \$1,472.50 total as per the itemized claim of the landlord's monetary worksheet.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 1, 2015 on fixed term tenancy ending on April 30, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$500.00 payable on the 1st day of each month and a security deposit of \$250.00 was paid on April 15, 2015. A condition inspection report for the move-in was completed on April 14, 2015.

The landlord seeks a monetary claim of \$1,470.50 which consists of:

\$250.00	Unpaid Rent, May
\$500.00	Unpaid Rent, June
\$220.50	General Cleaning
\$210.00	Ozone Treatment for Cigarette Smoke
\$290.00	Replacement of fridge and stove

The landlord stated that the tenant vacated the rental unit on June 1, 2016. The tenant disputed this stating that he had vacated on May 28, 2016. The landlord clarified that he had after some difficulty scheduling a condition inspection report for the move-out with the tenant, served the tenant with a notice of final opportunity to conduct a condition inspection report for the move-out for May 30, 2016. Both parties agreed that the tenant failed to attend the scheduled inspection date as per the notice.

The landlord stated that the tenant failed to pay all of the rent owed for May 2016 and clarified that the tenant had made a partial payment of \$250.00 on May 15, 2016, leaving rental arrears of \$250.00.

Both parties agreed that the tenant had started to give notice to vacate the rental unit on May 7, 2016 to vacate the rental unit on May 15, 2016, which was later cancelled by the tenant. The tenant stated that he had a verbal agreement with the landlord to offset the remaining May 2016 rent of \$250.00 by applying the \$250.00 security deposit. The landlord disputed this claim stating that no such agreement was made.

The landlord claims that because of the lack of proper notice of the tenant, the landlord was unable to re-rent the unit for June 1, 2016 and incurred a loss of rental income of \$500.00 for June 2016. The tenant confirmed that no written notice to vacate the rental unit was provided to the landlord.

The landlord stated that the tenant vacated the rental unit leaving it dirty and damaged. The landlord stated that the tenant left the carpet dirty and stained, the stove dirty and damaged, the refrigerator dirty and the door seal damaged, the bathroom towel holder broken and the bathroom dirty. The tenant confirmed that the rental unit was not cleaned upon his departure.

The landlord stated that the tenant had left the walls damaged with many holes requiring filling and repainting. The landlord stated that the tenant had left the rental unit with a damaged towel holder that was non-functional as shown by the submitted photographs. The tenant disputed this stating that the multiple holes and the towel holder were the result of wear and tear. The landlord argued that the wall holes were excessive, but was only seeking compensation for filling the holes and not painting.

The landlord stated that the rental unit was un-rentable due to cigarette damage caused by the tenant. The tenant disputed this stating that the building was old and that the occupant of the rental unit below him smoked and that this smoke had spread into his unit. The tenant stated that he had never informed the landlord of any cigarette smoke issues. The landlord stated that the rental unit was viewed by two prospective tenants, who had refused the unit because of the strong smoke smell within the unit. The tenant was unable to provide any supporting evidence regarding the smoke source from a different unit or that he had tried to notify the landlord. The landlord stated that there is a no smoking provision in the signed tenancy agreement.

The landlord stated that after the tenant had vacated the rental unit it was discovered that there was a tear in the seal for the refrigerator door which is beyond the normal wear and tear. The landlord also stated that the door had a dent. The tenant disputed these claims.

The landlord stated that after the tenant had vacated the rental unit it was discovered that the stove was damaged requiring repair and extensive cleaning. The landlord also noted that there was a missing control knob. The tenant disputed that the missing knob was due to wear and tear, but did admit that the stove was left without cleaning. The landlord clarified that instead of repairing the stove and the refrigerator he purchased used replacements as the cost of cleaning both the refrigerator and the stove and replacing the damaged parts would have cost more. The landlord indicated that he was trying to mitigate the costs by choosing a cheaper option. Both parties confirmed that both the refrigerator and the stove were old. The tenant claimed that both appliances were probably 20 years old. The landlord stated that the stove was only 5 years old.

In support of these claims, the landlord has provided:

- 20 photographs showing the condition of the rental unit and the damage to the claimed items
- A copy of an Invoice for \$220.50 for general cleaning, repair of damaged walls and to supply and install a towel holder
- A copy of a "Tenant's Move-Out and Clean-Up Checklist"
- A copy of an Invoice for \$210.00 for ozone treatment to remove cigarette smoke
- A copy of an Invoice for \$290.00 for a used fridge, stove and the delivery costs
- A copy of the signed tenancy agreement dated April 14, 2015
- A copy of the addendum to the signed tenancy agreement signed and dated on April 14, 2015
- A copy of the Notice of Final Opportunity to Schedule a Condition Inspection dated May 30, 2016
- A copy of the condition inspection report for the move-in dated April 14, 2015 and an incomplete condition inspection report for the move-out

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the evidence provided by both parties and find on a balance of probabilities that the landlord has established a monetary claim for compensation as claimed. The tenant admitted that all of the May 2016 rent was not paid and was not able to provide sufficient evidence to satisfy me that an agreement was made to offset the security deposit against the unpaid rent. Both parties confirmed that the tenant failed to provide proper written notice of 1 clear month to allow the landlord an opportunity to re-rent the unit. The tenant admitted that no cleaning was done prior to vacating the rental unit and the landlord has provided sufficient evidence to satisfy me that the rental unit was left dirty, with damaged wall (numerous holes) requiring filling and a dirty stove and refrigerator with damaged parts. I note that in the circumstances of replacing the stove and the refrigerator the landlord chose to replace the items in an effort to mitigate any costs. I note based upon the monetary claims made by the landlord that any costs to

clean then replace damaged parts would have been in excess of the claims. As such, I am satisfied that the landlord has established his monetary claim of \$1,470.50.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$250.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$1,320.50.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed with the Small Claims Division of the Provincial 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: January 06, 2017

Residential Tenancy Branch