



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- a monetary order for damages 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the landlord entitled to a monetary order for damages?

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

Is the landlord entitled to recover the filing fee for this application?

Background

The tenancy for this 2 bedroom furnished townhouse began on November 1, 2015 with a monthly rent of \$1550.00 payable on the 1st day of each month. The tenant paid a security deposit of \$775.00 at the start of the tenancy which the landlord continues to hold. The tenancy ended on July 31, 2016. A move-in condition inspection report was not completed. The landlord testified that she had a condition inspection checklist prepared but did not end up completing it with the tenant at move-in. A move-out condition inspection report was also not completed. The landlord testified that there was a physical confrontation in which the male tenant punched her son in the face on the move-out date and the tenants left abruptly afterwards. The police have a report of the incident. The landlord did not make attempts to schedule another inspection or

complete a checklist in the absence of the tenant. The tenant provided a forwarding address by e-mail to the landlord on July 31, 2016. The landlord filed her application to retain the security deposit on August 7, 2016.

Evidence & Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. The burden of proof rests with the landlord to establish that any loss was the result of the actions or neglect of the tenant contrary to the Act, Regulations or tenancy agreement.

Based on the testimony and the documentary evidence provided by the parties, my findings in relation to the various aspects of the landlords' application as set out on the Monetary Order Worksheet are as follows:

#1: painting front door

The landlord testified the front door needed to be repainted as it was scratched by the tenant. The landlord submitted an invoice in the amount of \$70.00 for this work.

The tenant testified that he never scratched or damaged the front door.

I find the landlord has provided insufficient evidence that there was damage to the door and more importantly that it was caused by the tenant. The landlord did not provide any picture evidence of the alleged damage and did not complete a condition inspection report upon move-in or move-out which would be evidence of the condition prior to move-in and condition upon move-out.

This part of the landlord's application is dismissed.

#2: cleaning

The landlord is claiming she found dog feces planted under the furniture and submitted an invoice for cleaning the entire rental unit. The landlord submits that after finding the feces she did not trust the tenants properly cleaned the rental unit. The landlord submitted two picture of the dog feces found under the furniture.

The tenant submits his wife spent 1½ days cleaning the rental unit on move-out. He denied planting any dog feces and submits the unit was clean when they vacated.

In the absence of a move-out condition inspection report, I find the landlord has provided insufficient evidence that the rental unit was not left reasonably clean at the

end of the tenancy. The landlord has not provided any pictures with respect to the cleanliness of the unit aside from the pictures of the dog feces.

This part of the landlord's application is dismissed.

#3: Filing Fee (addressed below)

#4: Lost mailbox key

The tenant agreed with this claim. The landlord is awarded **\$32.48**.

#5: Screen door replacement

The landlord submits the screen door was completely off the tracks and requires replacement. The landlord testified the screen door was working at the beginning of the tenancy. The landlord submitted photos of the broken screen door and a quote for the replacement cost. The landlord also submits that she has an audio recording which she submitted as evidence of the tenant threatening her property.

The tenant submits the screen door was not working properly when they took possession of the unit. Further, the tenant testified that during the confrontation on move-out, the landlord pushed his wife into the screen door which could have caused it to come off the tracks.

The landlord replied that there was no shoving.

It is evident that there was a confrontation between the parties. Neither party has provided the police report or any witness testimony which could have corroborated their respective version of the events. The audio recording of the tenant allegedly threatening the landlord's property is not on its own sufficient evidence that the tenant actually carried out the threat and caused damage to the landlord's property. Further, the landlord has only submitted a quote for the replacement cost and has not actually incurred the loss by having the replacement work completed. I find the landlord has not met her burden of proof and there is insufficient evidence in support of the landlord's claim that the tenant caused this damage to the screen door.

This part of the landlord's application is dismissed.

#6: replacement of mattress

The landlord is claiming the tenants left the mattress stained. The landlord submitted pictures of the stained mattress. The landlord submits the mattress is over 5 years old.

The tenant submits they did not inspect the mattress upon move-in and the stains could have been pre-existing as the mattress is over 5 years old.

In the absence of a move-in condition inspection report, I find the landlord has provided insufficient evidence that the damage to the mattress was caused by the tenants.

This part of the landlord's application is dismissed.

#7: dining chairs

The landlord submitted photos of the dining room chairs and submits they were badly scratched. The landlord is assuming the scratches were caused by the tenants' dog.

The tenant submits they did not use let alone damage the dining room chairs and their dog did not cause any damage to the chairs.

In the absence of a move-in condition inspection report, I find the landlord has provided insufficient evidence that the damage to the chairs was caused by the tenants.

This part of the landlord's application is dismissed.

#8: Gas being shut-off

The landlord alleges that in December 2016 the tenant returned to the rental complex and turned off the gas at the meter. The landlord submits the tenant has the keys to the complex so he had access to the meter.

The tenant denies this allegation and submits he has not returned to the complex since vacating at the end of July 2016. The landlord has provided no evidence in support of this allegation and this part of the landlord's application is dismissed.

The landlord has established a total monetary award of **\$32.48**.

Security Deposit:

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

Paragraph 24(2)(c) of the Act states that the right of the 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 complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Paragraph 24(2)(c) does not preclude a landlord from making a claim for a monetary order for damage to the rental unit.

Although the landlord did make a claim against the security deposit within 15 days of being provided the forwarding address, the landlord's right to claim against the deposit for damages was extinguished as the landlord failed to complete a condition inspection report at the start of the tenancy. The tenant's security deposit was not refunded within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I find the tenant is entitled to a return of the security deposit in the amount of **\$1550.00**, which is double the original security and pet deposit of \$775.00. Offsetting the monetary award of \$32.48 in favor of the landlord, the tenant is entitled to a monetary order of **\$1517.52**.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application from the tenant.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of **\$1517.52**. Should the landlord fail to comply with this Order, this Order may be filed in 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: February 08, 2017

Residential Tenancy Branch