



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the *Act*.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (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 August 13, 2016 and January 13, 2017. The tenant confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. The tenant stated that the landlord was served with the tenant's notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 16, 2016. The landlord has confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence as claimed by the tenant. The landlord stated that the tenant was served with the amended application for dispute resolution increasing the monetary claim to \$1,545.90 and adding the dispute codes for a monetary claim for damage (MND), for money owed or compensation for damage or

loss (MNDC) and recovery of the filing fee (FF) on January 17, 2017. The tenant confirmed receipt of the landlord's amended application as filed. I note for the record that the landlord's documentary evidence was not available during the hearing as there was no record noted in the file or on the database. However as both parties have confirmed receipt of the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

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?

Is the tenant entitled to a monetary order for return of double 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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties provided undisputed affirmed testimony that there was a verbal tenancy agreement in which the parties agreed to a month to month tenancy and that the monthly rent was \$900.00 payable on the 1st day of each month by cash. Both parties agreed that a \$450.00 security deposit was paid. Both parties agreed that no condition inspection report for the move-in or the move-out were completed. Both parties agreed that the tenancy ended on July 16, 2016 and that the tenant provided her forwarding address in writing to the landlord on July 26, 2016.

The landlord seeks an amended monetary claim of \$1,545.90.00 which consists of labour and parts to repair the kitchen cabinet door hinge, closet door handle in middle room, closet door handle in back room, bathtub stopper and painting the kitchen walls. The landlord provided verbal testimony which states that the cost of repairs is \$545.90 which exceeds the amount of the security deposit.

The tenant seeks a monetary claim of \$900.00 for return of double the security deposit as the landlord has failed to comply with the Act.

Both parties agreed that the landlord submitted photographs of the rental unit which the landlord claims is an accurate depiction of the rental unit at the end of the tenancy. The

landlord stated that the tenant left the rental unit damaged which required repairs or replacement to:

- Kitchen cabinet door hinge
- Closet door handle in middle room
- Closet door handle in back room
- Bathtub stopper
- Painting Walls in kitchen area

The tenant disputed the claims of the landlord. The landlord has also submitted a quote for \$545.90 for the noted repairs and replacement for labour and parts.

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.

The landlord has failed to provide sufficient evidence that the tenant caused damage to the rental unit. Although the landlord has claimed that the tenants vacated the rental unit leaving it damaged requiring repairs costing \$545.90, but has filed an amended monetary claim for \$1,545.90. The landlord has also provided details of a quote for \$545.90 which the landlord states was paid in cash, but has no record of any payment to the contractor for the work performed. Both parties agreed that the quote provided by the landlord fails to disclose any details of any work performed or any parts bought for replacement. I find in this instance as the tenant has disputed the claims of the landlord, save the broken bathtub stopper and as well that the landlord has failed to establish his claim for damages. The landlord has failed to provide sufficient evidence that damage occurred during the tenancy that was caused by the tenant or of an actual cost for the loss/damages. As such, the landlord's application is dismissed without leave to reapply.

As for the tenant's monetary claim, Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. In this case, both parties confirmed that the tenancy ended on July 16, 2016 and that the landlord received the tenant's forwarding address in writing on July 26, 2016. The landlord filed an application for dispute for the return of the security deposit on August 10, 2016 making it 14 days from the latter of the two dates when the landlord received the tenant's forwarding address in writing and when the tenancy ended. As such, I find that the landlord has complied with the Act and that section 38 (6) does not apply. However, the tenant is entitled to the return of the \$450.00 security deposit.

Conclusion

The landlord's application is dismissed without leave to reapply.
The tenant is granted a monetary order for \$450.00.

This order must be served upon the landlord. 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 13, 2017

Residential Tenancy Branch