



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF; MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid utilities pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- a monetary order 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 his security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlords and tenant attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

All parties were given full opportunity to provide affirmed testimony and present their evidence.

Preliminary Issue – Monetary Order for Unpaid Rent

Although the tenant's application does not specify a claim for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, I am satisfied based on the monetary amount, "details of dispute" box and

monetary worksheet that the tenant's application includes a monetary order for loss under the tenancy agreement in the amount of \$2,500.00.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid utilities?

Are the landlords entitled to a monetary order for damage to the rental unit?

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

Are the landlords 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

Although the parties agreed that they entered into written tenancy agreement, neither party provided a copy of the agreement. As per the testimony of the parties, the tenancy began on March 25, 2013 on a month-to-month basis. Rent in the amount of \$2,500.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$1,250.00 at the start of the tenancy. The parties agreed that the tenant provided his forwarding address in writing, to the landlords on March 25, 2016. The tenant vacated the rental unit on January 31, 2016.

The parties provided conflicting testimony in relation to the move-in condition inspection report. The landlords testified that a written move-in condition inspection report was completed and a copy given to the tenant whereas the tenant denied a report was completed or given to him. Both parties agreed that a move-out condition inspection report was not completed. Neither party provided a copy of any condition inspection reports.

The landlords applied for a monetary order in the amount of \$2,212.00 yet provided a monetary order worksheet in the amount of \$2,123.89. The landlords seek to recover outstanding utilities in the amount of \$600.89, repair and cleaning costs in the amount of \$563.00 and compensation for the tenant's failure to mow the lawn in the amount of \$960.00.

In reply, the tenant agreed that the landlords could retain \$600.89 from the security deposit for the outstanding utilities but contended the unit was left clean and he did mow the lawn during his tenancy. The tenant seeks the return of double his security deposit and \$2,500.00 in compensation for the landlords' refusal to permit garage use. The tenant testified that the tenancy agreement indicates parking and storage are included in rent yet the landlords never permitted access to the garage.

The landlords contended that the garage did not form any part of the tenancy agreement.

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 this case, the onus is on the applicant 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 respondent 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 applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

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 meet the burden and the claim fails.

Landlord

Although the landlords applied for a monetary order in the amount of \$2,212.00, their worksheet and testimony indicate they are actually seeking the lesser amount of \$2,123.89. Based on the tenant's admission that he owes and is willing to pay the outstanding utilities I find the landlords are entitled to \$600.89 in utilities. In the absence of condition inspection reports, photographs and receipts, I find the landlords have provided insufficient evidence to establish their repair and cleaning claim. In regards to the landlords' application for compensation for the tenant's failure to mow the lawn, I

find the landlords have failed to satisfy their burden as the tenant has provided an equably probable version of events, specifically that he did mow the lawn.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover \$50.00 of the \$100.00 filing fee paid for the application. In total, I find the landlords are entitled to \$650.89 in compensation.

Tenant

The tenant seeks \$2,500.00 in compensation for the landlords' refusal to permit garage access. I find the tenant has provided insufficient evidence to establish the garage formed part of the tenancy. For this reason I dismiss this portion of the tenant's claim.

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. The tenant may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization from the tenant, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

In this case, the landlords did not file an arbitration application to retain the deposit within the fifteen days of receiving the tenant's forwarding address in writing, the landlords did not return the deposit and the landlords did not receive written authorization to retain it. Based on this, I find the tenant is entitled to double the value of his security deposit in the amount of \$2,500.00.

As the tenant was partially successful in this application, I find that the tenant is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application for a total award of \$2,550.00.

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 \$650.89 of the \$2,500.00 security deposit in full satisfaction of the monetary award. The tenant is entitled to the remaining \$1,849.11 security deposit balance and \$50.00 filing fee for a total award of \$1,899.11.

Conclusion

The landlord is entitled to \$650.89 in damages. I order the landlord to retain \$650.89 from the security in full compensation of this amount. The tenant is entitled to the return of the balance of the security deposit. I therefore grant the tenant a monetary order for the balance of the deposit, in the amount of \$1,849.11 and the filing fee in the amount of \$50.00 for a total of \$1,899.11.

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 1, 2017

Residential Tenancy Branch