



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MND, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the cost of cleaning, flooring repair and for the filing fee. The tenant applied for the return of double the security deposit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for the cost of cleaning, flooring repair and for the filing fee? Did the tenant provide the landlord with a forwarding address within a year after the tenancy ended? Is the tenant entitled to the return of double the security deposit and the filing fee?

Background and Evidence

The tenancy started on July 01, 2014 and ended on April 24, 2015. The monthly rent was \$1,700.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$850.00.

The tenant testified that he left the country shortly after the tenancy ended and returned in March 2016 at which time he attempted to contact the landlord for the return of the security deposit. The tenant had an address for the landlord which he had acquired at the start of tenancy, from the BCID card of the landlord.

The tenant also attempted to contact the landlord by email and text messaging. The tenant stated that the email address was also the one he had used to contact the landlord at the start of tenancy, in July 2014.

The tenant stated that he sent his forwarding address with a request for the return of the deposit to the landlord at the address he had obtained from the landlord's BCID and to the address of the rental unit by registered mail. Both were returned to him.

The landlord stated that he had moved from the address on his BCID and had not given this address to the tenant as a contact address. The landlord stated that he showed the tenant his BCID at the tenant's request to view a piece of the landlord's identification.

The landlord stated that after the tenancy ended, he made enquiries at the Residential Tenancy Branch regarding keeping the deposit towards the cost of cleaning and repair. The landlord stated that he was informed that he would not be in a position to make an application until he received the forwarding address of the tenant in writing.

On September 13, 2016, the tenant made this application and mailed the notice of hearing package to the landlord at the BCID address. The landlord received this package. He explained that the occupant at this address forwarded the notice to him and that is how he received the notice of hearing and the tenant's forwarding address.

The landlord added that as soon as he received the tenant's forwarding address he mailed a cheque dated October 31, 2016, to the tenant for the return of the deposit. The tenant agreed that he had received the cheque and stated that he had not cashed it because he had already made the application for the return of double the deposit.

On February 03, 2017, the landlord made his own application for the cost of cleaning and repairs of flooring and drywall. The landlord filed into evidence receipts of the costs he incurred to clean and repair. The receipts are all dated May 01, 2015.

The landlord is claiming the following:

1.	Carpet cleaning	\$190.00
2.	Floor and dry wall repair	\$551.25
3.	Cleaning	\$336.60
4.	Filing fee	\$100.00
	Total	\$1,177.85

The tenant agreed that he had left the apartment in a condition that required cleaning and agreed to having caused one scratch on the laminate flooring. The tenant stated

that some of the damage to the drywall was present at the start of tenancy and referred to the move in inspection report. This damage to the drywall is noted on the report.

The tenant stated that the damage to the unit was from normal wear and tear but agreed that he had not had the carpet professionally cleaned and that he had not fully cleaned the rental unit at the end of tenancy.

Analysis

Landlord's application:

1. Carpet cleaning - \$190.00

The tenant agreed that he had not professionally cleaned the carpet. *Residential Tenancy Policy Guideline#1* addresses the responsibility for the residential premises.

With regard to carpets, the guideline states:

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

This tenancy started in July 2014 and ended in April 2015. Since the length of the tenancy was less than one year, I find that the tenant was not required to shampoo or steam clean the carpets and therefore I dismiss the landlord's claim for the cost of having the carpets professionally cleaned.

2. Floor and drywall repair - \$551.25

The tenant filed a copy of the move in inspection report that indicates that there were nicks on one of the walls. The tenant also filed a photograph of a damaged wall that was taken at the start of tenancy. The tenant denied having caused damage to the walls other than normal wear and tear.

The landlord filed close up photographs of scratched flooring. The tenant denied having caused the damage.

The receipts that the landlord filed into evidence are all dated May 01, 2015. The receipts appear to be written by different suppliers. The tenancy ended on April 24, 2015. The landlord stated that he paid all the suppliers on May 01, 2015 as they needed advance payment and that the work was done during the week following payment.

In determining the validity of the receipts, I considered the following:

1. The landlord made this application almost two years after he carried out the cleaning and repair work
2. The three receipts for cleaning and repair, written by three different suppliers are all dated the same
3. On a balance of probabilities it is not likely that all the work of carpet cleaning, general cleaning and the repair of the flooring and drywall were done on the same day as suggested by the receipts and the landlord's testimony.

Based on the above I find that the landlord has not proven his claim and therefore it is dismissed.

3. Cleaning - \$336.60

Since I have determined the receipts presented by the landlord do not fully satisfy me of their validity, I must dismiss the landlord's claim for the cost of cleaning.

However the tenant agreed that he had not fully cleaned the rental unit and based on the size of the unit which is a one bedroom unit, I find it appropriate to award the landlord \$100.00 towards cleaning.

4. Filing fee - \$100.00

Since the landlord has not proven his case, he must bear the cost of filing his application.

Tenant's application

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the security deposit.

S. 39 states that if a tenant does not give a landlord a forwarding address in writing within one year after the end of tenancy, the landlord may keep the security deposit and the right of the tenant to the return of the deposit is extinguished.

I now have to determine the date that the landlord received the tenant's forwarding address. The tenant testified that he left the country shortly after the tenancy ended and upon his return in March 2016, he made attempts to contact the landlord.

The tenant started making these efforts approximately 11 months after the tenancy had ended and therefore it is possible that the contact information that he had for the

landlord was not current. After sending two letters by registered mail that were returned to him as not picked up by the landlord and after sending the landlord emails and text messages that were not replied to, the tenant decided to apply for dispute resolution.

On September 02, 2016 the tenant made application. He amended this application on September 13, 2016 and sent the notice of hearing package to the landlord at his previous residential address. The landlord testified that the occupant at that address forwarded the notice to the landlord who picked up the package on October 31, 2016.

Based on the testimony of both parties and the documents filed into evidence, I find that the landlord received the forwarding address of the tenant when he received the notice of hearing package on October 31, 2016, which is 18 months after the tenancy ended.

A forwarding address only provided by the tenant on the application for dispute resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address.

Since I have determined that the tenant had not provided the landlord with a forwarding address, prior to serving the landlord with the notice of hearing package, I find that the landlord had no way of returning the deposit by mail or making application for damages against it. The landlord is not bound by the 15 day time frame after receipt of the forwarding address contained in the notice of hearing.

Since the landlord received the forwarding address contained in the notice of hearing, on October 31, 2016 and the tenancy ended on April 24, 2015, I find that the landlord received the forwarding address of the tenant more than one year after the tenancy ended. Accordingly s.39 of the *Residential Tenancy Act* applies and the landlord may keep the security deposit and the right of the tenant to the return of the deposit is extinguished.

Since the landlord returned the deposit on October 31, 2016, I will award the landlord the amount of the deposit. The landlord has also established a claim for \$100.00 for cleaning.

The tenant has not proven his case and therefore must bear the cost of filing this application.

Overall the landlord has established a claim for the security deposit and the cleaning in the total amount of \$950.00.

I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

In this case since the landlord has already returned the security deposit to the tenant, the tenant has the option of returning the uncashed cheque to the landlord along with \$100.00 or may choose to cash the landlord's cheque and then pay the landlord \$950.00

Conclusion

I grant the landlord a monetary order in the amount of **\$950.00**.

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: March 07, 2017

Residential Tenancy Branch