



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNSD, FF, MNR

Introduction

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

- a monetary order for unpaid rent and 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 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 its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord confirmed that he received the tenants' documentation. The tenant advised that she did not receive the landlords documentation however the landlord provided documentary evidence that he sent the documentation to the tenant by registered mail and that it was unclaimed. On that basis, I was satisfied that documentation was served upon the other party in accordance with Section 89 of the Act and the hearing proceeded and completed on this date.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background, Evidence

The tenants' testimony is as follows. The tenancy began on May 1, 2014 and ended on August 28, 2016. The tenants were obligated to pay \$1750.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$875.00 security deposit. The tenant testified that a written condition inspection report was done at move in but not at move out. The tenant testified that only a walk through was done on August 27, 2016 but nothing was written down. The tenant testified that the landlord didn't return her security deposit within fifteen days of her moving out so she feels she's entitled to the return of double the amount.

The tenant testified that the first time she provided her forwarding address to the landlord was when she served the landlord the notice of hearing documents and her application on September 22, 2016. The tenant also seeks the recovery of the \$100.00 filing fee and the \$38.00 for registered mail costs. The tenant testified that she disputes the entirety of the landlords claim except for some missing and damaged parts for the fridge, curtain and garage remote in the amount of \$104.22.

The landlord gave the following testimony. The landlord testified that the tenant did not provide her forwarding address to him in writing. The landlord testified that he only became aware of it when she served him notice of this hearing. The landlord testified that he filed within 15 days of her filing her application. The landlord testified that the tenant caused some damage to the floors, walls, trim, blinds, curtain and garage remote. The landlord testified that the tenant left the unit dirty and that it cost him \$240.00 to clean the unit.

The landlord is applying for the following:

| | | |
|----|--------------|-------------------|
| 1. | Parts | 104.22 |
| 2. | Floor Repair | 896.00 |
| 3. | Painting | 428.16 |
| 4. | Trim | 150.00 |
| 5. | Blinds | 246.40 |
| 6. | Cleaning | 240.00 |
| 7. | Filing fee | 100.00 |
| 8. | | |
| | Total | \$2,164.78 |

Analysis

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

Firstly I address the landlords' claims and my findings as follows.

Parts

The tenant accepts responsibility for these charges, accordingly; the landlord is entitled to \$104.22.

Floor Repair, Painting, Trim, Cleaning, Blinds

The tenant disputes these claims. The tenant testified that nothing more than wear and tear could be attributed to her. The landlord testified that he had the cleaning and painting done but neglected to submit the receipts to reflect the actual amount of costs being sought. The landlord testified that he has not undertaken to conduct the other repairs at this time and has submitted some "estimates and quotes". The landlord testified that he didn't conduct a written condition inspection report at move out "because we didn't agree so there was no point".

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.

It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord **failed to provide sufficient evidence** to show the changes in the condition of the unit, that the tenant caused the damage, what the costs of those damages are and the loss incurred, accordingly I dismiss this portion of the landlords claim.

I address the tenants' claims and my findings as follows.

Registered Mail Costs

Registered mail costs are costs that a party incurs to litigate ones claim. The Act does not allow an Arbitrator to award the recovery of those costs, accordingly; I dismiss this portion of the tenants claim.

Return of Double the Deposit

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenant testified that she didn't provide her forwarding address in writing to the landlord but chose to go to arbitration and only then she provided her forwarding address to the landlord when she served him notice of this hearing thus extinguishing the landlords' opportunity to return it within the fifteen days as outlined in section 38 of the Act. It is worth noting, although moot, the landlord did in fact file his application on October 7, 2016; fifteen days after receiving the tenants' forwarding address. Based on the above the doubling provision is not applicable under these circumstances.

As neither party has been completely successful in their applications, I decline to award either party the recovery of the filing fee and they must each bear that cost.

The tenant stated that she paid the deposit in American funds, however there is insufficient evidence before me at the time of this hearing to support that claim, and therefore the amount awarded is in Canadian funds.

Conclusion

The landlord has established a claim for \$104.22. I order that the landlord retain \$104.22 from the security deposit in full satisfaction of the claim and return the balance of 770.78 to the tenant. I grant the tenant an order under section 67 for the balance due of \$770.78. This order may be filed in the Small Claims 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: March 28, 2017

Residential Tenancy Branch