



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit 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.

The landlord's two agents (collectively the "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Each agent confirmed they were agents of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, the tenant confirmed she had received the landlord's application and evidence package and had not provided any documentary evidence of her own. I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

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

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

Background and Evidence

As per the testimony of the parties, the tenancy began on March 1, 2015 on a month-to-month basis. Rent in the amount of \$925.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$462.50 at the start of the tenancy. The tenant vacated the rental unit on August 30, 2016.

The parties agreed that condition inspection reports were conducted at move in and move out. The parties also agreed that the tenant provided a forwarding address on August 31, 2016 on the condition inspection report and subsequent to this the tenant provided an updated forwarding address to the landlord on September 21, 2016.

Landlord Claim

The landlord seeks compensation in the amount of \$804.30 including the following;

Item	Amount
Repair walls in bedroom	\$60.00
Paint walls and baseboards in bedroom	\$150.00
Repair two bedroom doors	\$165.00
Replace blinds in bedroom	\$40.00
Wash walls and floors	\$200.00
Supplies	\$151.00
GST	\$38.30
Total Monetary Claim	\$804.30

The landlord provided copies of the move-in and move-out inspection reports, a receipt for the above repairs, an email dated September 21, 2016 and photographs.

Tenant Reply

The tenant testified that she attended the move-out inspection, signed the report, provided her forwarding address but did not receive her security deposit or a copy of the report. The tenant testified that the above deficiencies were not noted on the move-out inspection report, other than the bedroom door damage. The tenant acknowledged that the second bedroom required painting due to wall damage. The tenant seeks the return of her security deposit.

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 landlord 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 landlord 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Subsection 37(2) of the *Act* specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. As per the Residential Tenancy Policy Guideline # 1 "Landlord & Tenant – Responsibility for Residential Premises," tenants are responsible for all deliberate or negligent damage to the walls.

Based on the presented evidence I am satisfied the second bedroom door and walls were damaged as result of this tenancy and therefore find the landlord is entitled to a nominal award. I dismiss the landlord's remaining monetary claim due to insufficient evidence. In total, I find the landlord is entitled to;

Item	Amount
Repair walls in bedroom	\$60.00
Paint walls	\$100.00
Repair one bedroom door	\$82.50
Supplies	\$75.50
Total Monetary Award	\$318.00

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application.

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 tenants 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.

The landlord initially received the forwarding address on August 31, 2016 and later received a second forwarding address on September 21, 2016. The landlord did not file an arbitration application to retain the deposit until October 4, 2016, which is past the fifteen days after receipt of the first forwarding address. The landlord did not return the full deposit and the landlord did not receive written authorization to retain it. Based on this, I find the tenant is entitled to double the value of her security deposit in the amount of \$925.00.

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 \$368.00 of the \$925.00 security deposit in full satisfaction of the monetary award. The tenant is entitled to the remaining \$557.00 security deposit balance.

Conclusion

Item	Amount
Repair walls in bedroom	\$60.00
Paint walls	\$100.00
Repair one bedroom door	\$82.50
Supplies	\$75.50
Filing Fee	\$50.00
Landlord Total Monetary Award	\$368.00
Less Double Security Deposit	(\$925.00)
Tenant Total Monetary Order	\$557.00

The landlord is entitled to \$318.00 in damages and \$50.00 for the filing fee for a total of \$368.00. I order the landlord to retain \$368.00 from the security deposit 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 \$557.00.

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: April 10, 2017

Residential Tenancy Branch