



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONE WEST PROPERTIES CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, MNDC, FF

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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

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 tenant gave the following testimony. The tenancy began on August 1, 2013 and ended on September 29, 2016. The tenants were obligated to pay \$1650.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$825.00 security deposit and an \$825.00 pet deposit. The tenant testified that she provided her forwarding address to the landlord at the move out inspection on September 29, 2016 but did not receive her deposit within fifteen days. The tenant testified that she did not leave on good terms with the landlord and didn't want to contact him so she filed for dispute resolution on October 24, 2016.

The tenant testified that she was contacted by the landlord on October 31, 2016 for charges that he told her she was responsible for. The tenant testified that she agreed to the \$200.00 strata fines and the \$250.00 for cleaning as she was quoted and noted at the move out inspection. The tenant testified that she did not agree to the inflated cost to fix the toilet, the screen door or the elevated cost of cleaning. The tenant is seeking the return of double her deposits and the recovery of the filing fee for an amount of \$3400.00.

The landlord gave the following testimony. The landlord testified that he mailed the tenant her deposits minus the costs to cover some of the cleaning, repairs and strata fine on October 7, 2016. The landlord testified that the cheque was never cashed nor did it come back. The landlord testified that the tenant did not provide an opportunity to resolve the matter, but instead filed for arbitration. The landlord testified that the tenant should not be entitled to double. The landlord testified that he gave estimates at the move out inspection as to the costs of cleaning and repairs. The landlord testified that he's not an expert in all fields of repair and requires him to hire professional repairmen. The landlord testified that there is no reason to dispute the costs as that is how much it is.

The landlord is applying for the following:

1.	Suite Cleaning	404.25
2.	Repair Toilet	319.59
3.	Strata fine	200.00
4.	Screen Door	241.50
5.	Filing Fee	100.00
6.		
	Total	\$1265.34

Analysis

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 arguments are reproduced here. The principal aspects of the each party's claim and my findings around each are set out below.

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.

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

Suite Cleaning

The parties agreed to \$250.00 for suite cleaning at the move out inspection. The tenant stated that the \$404.25 was more than agreed to and a significant increase. The landlord did not provide sufficient evidence to explain the larger than agreed to price, accordingly I grant the landlord \$250.00 for cleaning as agreed upon at the move out inspection.

Toilet Repair

The landlord testified that a part was broken in the toilet for about a year and half. The landlord testified that it wasn't urgent to repair but it's the responsibility of the tenant to rectify all deficiencies of the unit at move out. The tenant testified that it was a manufacturers issue and that the part is about fifteen to twenty five dollars which she would have agreed to but not the \$319.59 as claimed by the landlord. Section 32 of the Act stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and makes the unit suitable for occupation by a tenant. The landlord did not provide sufficient evidence that the tenant was reckless or negligent in her actions to cause the damage and therefore this is a cost that the landlord must bear as part of maintaining the property; accordingly I dismiss this portion of the landlords' application.

Strata Fine

The tenant accepts responsibility for this claim; accordingly the landlord is entitled to \$200.00.

Screen Door

The parties agree that the tenant's dog ran through the screen door and damaged it. Where the parties disagree in the cost, the tenant testified that the door could have been repaired for under a hundred dollars. The landlord provided a receipt to support the \$241.50 as claimed. I find that due to the actions of the tenants' dog, the screen door was damaged beyond wear and tear and is a cost the tenant must bear; accordingly I find that the landlord is entitled to \$241.50.

The landlord is entitled to a total of \$691.50.

I now address the tenants' application and my finding as follows.

Tenants Request for return of double her security and pet deposit.

The landlord testified that he mailed the tenant a cheque on October 7, 2016 by regular mail. Section 88 of the Act addresses the issue before me as follows

How to give or serve documents generally

- 88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

I find the testimony of the landlord to be clear, concise and compelling. He was clear as to the timeline of events and his process in which he mailed out the security deposit to the tenant. Based on the above I find that the landlord did act in accordance with Section 38 of the Act in mailing the tenant her deposit within fifteen days and therefore the doubling provision does not apply as the landlord cannot be held responsible for issues with the mail service.

The tenant is entitled to the return of her deposits of \$1650.00 minus the landlords award of \$691.50 = \$958.50.

As neither party was completely successful in their application they must bear the cost of their filing fee.

Conclusion

The landlord has established a claim for \$691.50. I order that the landlord retain that amount from the deposit and that the remaining \$958.50 be returned to the tenant. I grant the tenant an order under section 67 for the balance due of \$958.50. 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: April 27, 2017

Residential Tenancy Branch