



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, 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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package(s) submitted by the other party via Canada Post Registered Mail on December 16, 2016. The tenant confirmed receipt of the landlord's submitted documentary evidence. The tenant confirmed that no documentary evidence was submitted by the tenant. I accept the affirmed evidence of both parties and I find that both parties have been properly served as per sections 88 and 89 of the Act.

The hearing was adjourned due to a lack of time and was reconvened on March 24, 2017 with both parties present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on January 1, 2012 on a fixed term tenancy ending on May 31, 2013 as shown by the submitted copy of the signed tenancy agreement dated May 19, 2012. The monthly rent was \$1,850.00 payable on the 1st day of each month. A security deposit of \$925.00 was paid on May 19, 2012. A condition inspection report for the move-in was completed by both parties on May 31, 2012. An incomplete condition inspection report was made by the landlord on July 31, 2016 without the tenant.

The landlord seeks a monetary claim of \$14,382.71 which consists of:

\$2,100.00	Painting
\$167.27	Carpet Cleaning
\$236.25	Cleaning
\$9.53	Replace Microwave/Exhaust Fan Filter
\$4.90	Silicone for Washbasin
\$42.90	lightbulbs
\$3,150.00	Estimate Replace Wood Floors
\$2,400.00	Estimate Replace Kitchen Cabinets
\$130.00	Wash Curtains
\$700.00	Washbasin
\$3,992.11	Estimate Replace Carpets
\$204.75	Repair Fireplace
\$120.00	Repair Fireplace
\$165.00	In-Sink Erator
\$180.00	In-Sink replacement
\$280.00	Repair Bathtub
\$500.00	Estimate to replace washbasin

The landlord provided affirmed testimony that the tenant vacated the rental unit on July 30, 2016 and that it was discovered that the tenant left the unit dirty and damaged. The landlord stated the rental premises had holes throughout the walls in the unit which required patching and the painting of the entire unit. The tenant disputed this stating that no holes were left. The landlord claims that the tenant left stains in the carpet which required carpet cleaning costs of \$167.37. The landlord stated that some stains were still present and not removable. The tenant disputed this claim stating that the carpets were cleaned by a professional cleaner on July 30, 2016 prior to moving out. The tenant is unable to provide any evidence to support this claim. The landlord stated that the rental unit was left dirty throughout which required a professional cleaner. The tenant disputed this stating that a professional cleaner was hired to clean on July 30, 2016 prior

to moving out. The landlord stated that the tenants failed to clean the exhaust filter and that it was discovered damaged which required a replacement for \$9.53. The tenant disputed this claim.

The landlord has submitted a completed condition inspection report for the move-in, invoices, receipts and photographs of the rental unit at the end of tenancy to support his claims.

The tenant disputes the landlord's claims stating that the carpets were washed on July 30, 2016 and that the landlord has failed to provide proof of carpet stains. The tenant also stated that the landlord's claim for cleaning is noted on the invoice for "after construction" cleaning. The landlord disputes this. The tenant was unable to provide any supporting evidence.

During the hearing the landlord cancelled the following portions of his claim reducing the total claim to \$13,582.71:

\$120.00	Fireplace repair
\$180.00	In Sink Erator replacement
\$500.00	wash basin replacement

The tenant seeks a return of double the security deposit of \$1,850.00 as the landlord has refused to return the original \$925.00 security deposit under section 38 of the Act.

Both parties confirmed that the tenancy ended on July 30, 2016 and that the landlord received the tenant's forwarding address in writing in a letter on January 5, 2017.

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 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.

I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant on the following items of claim totalling, \$8,837.18. I base this upon the landlord's provided evidence in the form of a completed condition inspection report for the move-in for comparison with the submitted photographs at the end of tenancy and invoices/receipts for an actual cost of the repairs. I find that this sufficiently

shows a comparison of the rental premises before and after the tenant had possession of the rental premises.

\$2,100.00	Painting
\$167.27	Carpet Cleaning
\$4.90	Silicone for Washbasin
\$42.90	lightbulbs
\$2,400.00	Estimate Replace Kitchen Cabinets
\$130.00	Wash Curtains
\$3,992.11	Estimate Replace Carpets

On the landlord's following items of claim, I find that the landlord has failed to provide sufficient evidence to satisfy me that the tenant caused through their actions or neglect the damages. I also find that the landlord has failed to provide sufficient evidence of an actual amount incurred for repair/replacement of these items as the landlord relied heavily on his opinion on the damage as well as the estimated cost of repairs. The landlord provided no actual estimates, invoices or receipts. The landlord instead refers to the amounts based upon his "experience" and his making observations of online ad prices. The landlord had also provided direct testimony that some of these issues were as a result of repairs during the tenancy. The landlord failed to provide sufficient evidence that the repairs made were as a result of neglect by the tenant.

\$236.25	Cleaning
\$9.53	Replace Microwave/Exhaust Fan Filter
\$3,150.00	Estimate Replace Wood Floors
\$700.00	Washbasin
\$204.75	Repair Fireplace
\$165.00	In-Sink Erator
\$280.00	Repair Bathtub

The landlord has established a monetary claim of \$8,837.18. The landlord having been successful in his application is entitled to recovery of the \$100.00 filing fee.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, both parties confirmed that the tenancy ended on July 30, 2016 and that the tenant provided his forwarding address in writing in a letter on January 5, 2017. It is clear that the landlord filed for dispute on December 15, 2016 and complied with the Act by filing an application for dispute within 15 days when the tenant provided his forwarding address in writing

to the landlord on January 5, 2017. As such, I find that the tenant has failed to establish a claim for return of double the security deposit.

I authorize the landlord to retain the \$925.00 security deposit in partial satisfaction of the claim.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to offset the security deposit, plus the recovery of his filing fee

Item	Amount
Damages	\$8,837.18
Less Security Deposit	-925.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$8,012.18

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 4, 2017

Residential Tenancy Branch