



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 the landlord's application pursuant to the *Residential Tenancy Act* (the Act) 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 her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 19, 2016. Both parties also confirmed that the tenant served the landlord with the submitted documentary evidence in person on March 27, 2017. Neither party raised any issues with service. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

During the hearing the tenant advised that as of the date of this hearing the landlord has still failed to return the security deposit.

At the end of the hearing the tenant advised that she had a new mailing address and provided a mailbox number in the same city. As such, the tenant's mailing address in the application shall be updated to reflect this change.

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?

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 applicant's claim and my findings are set out below.

Both parties confirmed in their direct testimony despite the contents of the signed tenancy agreement that this tenancy began on September 30, 2015 on a fixed term of 1 year until September 30, 2016. The monthly rent was \$1,200.00 and a security deposit of \$600.00 was paid.

Due to an arithmetic error, the landlord seeks an amended monetary claim of \$1233.29 which consists of:

\$965.20	Estimated Replacement of Carpet
\$168.00	Replacement of cracked shower drain

The landlord states that after a condition inspection report was completed with the tenant on September 27, 2016 the landlord discovered damage left by the tenant on September 28, 2016. The landlord stated that she had failed to properly inspect the rental property and had missed the damage. The landlord noted that the carpeted flooring was wet during the move-out inspection that damage was discovered in the plywood, underlay and carpeting. The landlord stated that water leaking from the tenant's freezer caused extensive damage to the flooring. The landlord provided undisputed affirmed testimony that during the tenancy the tenant had an old freezer in the exact same spot and that because of its condition the tenant was repeatedly cautioned to remove the freezer due to the potential danger of leaking.

The tenant disputes the landlord's claims stating that the completed condition inspection report fails to identify either of these two items as issues. The tenant argues that the landlord has not provided any details to support the monetary amounts claimed for the estimated flooring replacement as well as the repair cost of the cracked drain. The tenant provided affirmed testimony that he could not contradict the landlord's claim that

a cracked drain was left. The tenant had in fact confirmed that no crack was present at the beginning of the tenancy.

The landlord's witness provided undisputed affirmed testimony that he had observed that the tenant's freezer had leaked into the carpet flooring. The landlord's witness confirmed the receipt of \$168.00 for the cost of repairing the cracked drain.

The landlord provided undisputed affirmed testimony that the carpet and flooring has not been replaced or repaired. The landlord also stated that the amount claimed for the carpeted flooring is an estimate not based upon any contractor/repairman. The landlord stated that the cracked drain was fixed, but that no bill/invoice was submitted for review.

In support of this application the landlord relies upon the submitted copy of an email with 3 photographic attachments. During the hearing both parties were notified that the quality of the 3 photographs failed to provide any discernable details to assist in determining the condition of the toilet and flooring.

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 affirmed testimony of both parties and find on a balance of probabilities that the landlord has failed to provide sufficient evidence to show that the tenant caused damage to the carpeted flooring. Both parties have provided conflicting testimony and the landlord has not provided sufficient evidence to show that damaged flooring was caused by the tenant during the tenancy. I note that the landlord completed a condition inspection report for the move-in and the move-out which fails to identify any issues with the flooring or the cracked drain. As such, I find that the landlord has not established a claim for this portion of the application. However, the landlord has provided undisputed affirmed testimony that a cracked drain was left by the tenant at the end of the tenancy. The tenant provided affirmed testimony that he could not contradict the landlord's claim

as he did not notice any issues for the drain. Although the landlord failed to provide a copy of the repair receipt, the landlord's witness confirmed that the landlord had paid \$168.00 for the cost of repair/replacing the cracked drain. As such, I find that the landlord is entitled to recovery of \$168.00 for the cracked drain.

The landlord has established a monetary claim of \$168.00. Having been only partially successful in the application, I grant the landlord a partial recovery of the filing fee of \$50.00. In off-setting this claim, I authorize the landlord to retain \$218.00 from the \$600.00 security deposit currently held. The landlord is to return the remaining \$382.00 to the tenant.

Conclusion

The tenant is granted monetary order for \$382.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial 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 12, 2017

Residential Tenancy Branch