



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNSD MNDC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- 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; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38.

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

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with the Applications and evidence.

Issues(s) to be Decided

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

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

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 tenant entitled to the return of his security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to a monetary award equivalent to double the value of the 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 monetary compensation for loss or other money owed under the *Act*, regulation or tenancy agreement?

Background and Evidence

This periodic tenancy began on or about November 1, 2014, when tenants not party to this dispute commenced residing in this rental unit. Monthly rent was set at \$2,500.00 per month. The tenant testified that he had moved into the rental suite as a replacement for another tenant, and that a new move-in condition inspection report was not done at that time. The tenant signed an addendum to the original lease on December 22, 2015 adding himself as a tenant. The tenant submitted a copy of the move-in report, dated November 1, 2013, which reflects the name of the tenants on the original tenancy agreement dated October 8, 2014.

The tenant testified that this tenancy ended on December 15, 2016. The landlord had collected a security deposit in the amount of \$1,250.00 at the beginning of the tenancy, and continues to hold this deposit. The tenant provided a forwarding address to the landlord by email, through the landlord's agent, on December 1, 2016. As the landlord did not dispute this fact, I find that the tenant did provide the landlord with his forwarding address as required by the *Act*.

The tenant had sent a formal letter to the landlord, dated November 14, 2016, notifying the landlord that he was giving notice to end the month-to-month tenancy on December 31, 2016, stating that "I plan to vacate the premise not later than 10:00am on December 31st, 2016. However it is likely that I shall have vacated the premise by December 15th, 2106. This is noted as a matter of consideration should the landlord find suitable tenants and wish to terminate the lease early via a mutual agreement to end tenancy". The tenant testified that a co-tenant had moved out, "abandoning the unit", on December 1, 2016, leaving him to pay the December rent and to do the cleanup and repairs. The tenant testified that he was not in contact with this co-tenant who had moved out, but the landlord had allowed her to move out early, leaving him to deal with the end of the tenancy and the December 2016 rent.

The tenant testified that he had paid for professional cleaning upon move out, and submitted an invoice in his evidence for \$330.75, dated December 14, 2016. The tenant was present for the move out inspection completed the next day, and testified that he was asked to sign the form before it was completed in his presence. The tenant submitted a copy of the report in his evidence, which contained his signature and a handwritten note at the bottom that he had "attended the move out inspection". The tenant submitted, in his evidence, photos of the vacant suite. The tenant testified that he had returned the keys to the landlord, and then vacated the suite. He testified that the landlord did not return his security deposit, nor did he give permission for the landlord to retain any portion of it.

The tenant submitted a monetary claim for \$3,787.50. He requested the return of his deposit in the amount of \$1,250.00 plus the equivalent as compensation for the landlord's failure to comply with the Act. The tenant is also seeking \$1287.50 in compensation from the landlord for allowing the co-tenant to move out early.

The landlord did not dispute the fact that she kept the tenant's deposit, stating that there were \$1,300.00 in damages left by the tenant. The landlord filed her application for dispute resolution on January 10, 2017 for an order to retain the tenant's security deposit in satisfaction of her monetary claim for damages to the rental unit. The landlord also applied for the recovery of the \$100.00 filing fee. The landlord stated that she had performed a move-in inspection with the original tenants in 2014, and did not perform a new one when the current tenant moved in as it was not a new tenancy, but a change of roommates. The landlord stated that she had complied with the Act by completing an Addendum to Tenancy Agreement, which was signed by all parties. A couple of the agreement was submitted in evidence.

The landlord testified that she did not give authorization for the co-tenant to move out early, but she did not have the ability to stop her either. She testified that she had given the tenant the option of moving out early as well, but he was in Asia. The landlord provided the following list of damages for her monetary claim:

Item	Amount
Damage to master bedroom door frame	\$100.00
Kitchen granite counter damage	200.00
Marble Tile in Kitchen	200.00
Den floor Tile Stain	50.00
Holes in Bedroom Ceiling	100.00
New Entry Door Lock	100.00
Yellow Marks on Balcony Floor (repainting)	150.00
Broken Bathroom Mirror	200.00
TV bracket holes in master bedroom	200.00
Recovery of Filing Fee for this Application	100.00
Security Deposit	-1250.00
Total Monetary Order Requested	\$150.00

The landlord provided photos in her evidence, along with the contact information of a handyman. No invoices or receipts were submitted. The landlord stated that she did not charge for deficiencies, but only "major things". AY, the landlord's husband testified as a witness in this hearing. He stated that he was present on December 15, 2016 when his wife had taken the photos of the suite, and that he had instructed the tenant to sign the move out inspection report, but the tenant had refused. He did not dispute that the suite was clean, but he stated that there were indeed damages as listed by the landlord. The landlord was able to re-rent the apartment

upon move out, and a move-in inspection with the new tenant was completed on the same date, December 15, 2016.

The tenant's witness, RM, stated that the landlord did not submit any evidence to support her claims like receipts or statements. She stated that the tenant did send the landlord his forwarding address, and the landlord failed to file for dispute within fifteen days of receiving that address.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants."

In this case, I find that the landlord had not returned the tenants' security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. The landlord did not apply for dispute resolution until January 10, 2017, more than 15 days after being provided the forwarding address. The tenant gave sworn testimony that the landlord had not obtained his written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenants has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, I find that the tenant is entitled to a monetary order amounting to double the original security deposit.

Residential Tenancy Policy Guideline #13 states that "*co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The*

responsibility falls to the tenants to apportion among themselves the amount owing to the landlord". The tenant is seeking monetary compensation from the landlord for a portion of the December 2016 rent as the co-tenant had moved out without proper notice, and according to the tenant, with permission from the landlord. Section 26(1) of the Act states that a "tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." According to Guideline #13 and the *Act*, I find that the tenant is not entitled to compensation from the landlord as the responsibility of paying the December 2016 rent fell on the remaining tenant. Accordingly I dismiss this portion of the tenant's application.

I note that the landlord did not submit any receipts, invoices or estimates in support of her monetary claim, although the landlord did submit photos in her evidence. The majority of the damages in the photos appear minor in nature with the exception of the paint on the balcony floor, and the damage to the counter of the master bathroom. I note that the landlord was able to re-rent the suite upon the end of this tenancy, which reflects the minor nature of the damage. Although the tenant stated that these damages were caused by his former co-tenant, Guideline #13 clearly states that co-tenants are jointly and severally liable for debts and damages related to the tenancy. I find that the landlord is entitled to a nominal monetary award to reflect the damage reflected in the photos, as no receipts were submitted in support of the landlord's claim. I issue a monetary award to the landlord in the amount of \$200.00. I order that the landlord return to the tenant his entire security deposit minus this \$200.00 award.

As the landlord was only partially successful in her application, I dismiss her application to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the original security deposit plus a monetary award equivalent to the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. I find that the landlord is entitled to a monetary award in the amount of \$200.00, which is deducted from this Monetary Order.

Item	Amount
Return of Security Deposit	\$1,250.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,250.00
Monetary Award to Landlord for Damages	-200.00
Total Monetary Order	\$2,300.00

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's monetary application is dismissed.

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 20, 2017

Residential Tenancy Branch