



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF; 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 unpaid rent, for damage to the rental unit, 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 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.

This hearing also addressed the tenant's cross application for:

- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord, each represented by agents, attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were 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 unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the tenant authorized to obtain a return of all or a portion of the security deposit?

Is either party authorized to recover the filing fee?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 31, 2016 on a fixed term until October 31, 2016. Rent in the amount of \$950.00 was payable on the first of each month. The tenant remitted \$475.00 for the security deposit at the start of the tenancy, which the landlord retains in trust.

On an undisclosed date the tenant communicated to the landlord that he wanted to vacate the rental unit prior to the end of the fixed term, for work relocation purposes.

In a September 28, 2016 text, the tenant advised the landlord that he had vacated the unit this date and had left the keys in the mailbox. The parties agreed that condition inspection reports were not done at move-in or move-out. The landlord confirmed receipt of the tenant's written forwarding address on October 5, 2016.

Landlord Claim and Tenant Reply

The landlord is seeking compensation in the amount of \$1,599.98, including the following;

Item	Amount
Cleaning and garbage disposal	\$475.00
Damaged garbage can and mop	\$74.98
October rent	\$950.00
Filing fee	\$100.00
Total Monetary Claim	\$1,599.98

The landlord testified that the unit was left unclean and the unit contained garbage at the end of the tenancy. A friend of the landlord's provided affirmed testimony that on September 28, 2016 she observed the rental unit is a messy state, specifically towels on the floor and bags of bottles under the kitchen sink. The landlord seeks to retain the entire security deposit in the amount of \$475.00 for cleaning and garbage removal. The landlord testified that the unit was fully furnished and upon the tenant's vacancy, the landlord discovered a broken garbage can and mop for which she seeks \$74.98 in replacement costs. Because the tenants ended the fixed term early by vacating the rental unit, the landlord seeks to recover \$950.00 in rent. The landlord seeks to recover the \$100.00 filing fee paid for this application. In an effort to support her claim, the landlord provided a copy of the tenancy agreement, receipts, photographs and a written statement.

In reply, the tenant testified that the unit was left clean and any garbage depicted in the landlord's photographs was placed there by the landlord. The tenant contends the landlord took the contents of the recycling bin, spread it about the rental unit and took photographs to submit as evidence. The tenant denies the mop or garbage can was broken. In relation to the end of tenancy, the tenant testified that the landlord breached the tenancy agreement and out of fear for his safety, he vacated the unit early on September 28, 2016.

Tenant Claim and Landlord Reply

The tenant is seeking compensation in the amount of \$4,257.77, including the following;

Item	Amount
Return of security deposit	\$475.00
Security deposit penalty	\$475.00
September 28 – 30 repayment of rent (\$31.67/day)	\$95.01
Filing fee, mail costs, photo copying, photo development	\$154.41
Tenant loss of 2 weeks work (\$25/hr x 80)	\$2,000.00
Tenant spouse loss of 1 week of work (55k/52 wks)	\$1,057.69
Total Monetary Claim	\$4,257.77

The tenant seeks double the amount of his security deposit in the amount of \$950.00 for the landlord's failure to return the deposit with 15 days of receipt of his forwarding address. Because the tenant paid September rent in full and was forced to leave out of fear for his safety, he seeks to recover the last two days of rent in the amount of \$95.01. The tenant also seeks to recover \$154.41 for the filing fee, mail cost and photograph development. It is the tenant's position that because he was forced to leave the rental unit, he could not provide adequate notice to his employer before moving to the island. The tenant seeks two weeks of lost wages in the amount of \$2,000.00 and one week for his wife's lost wages in the amount of \$1,057.69.

In reply, the landlord testified that a mutual agreement to end tenancy was not signed nor was a notice to end tenancy issued. The tenant left without providing prior written notice.

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

Landlord Claim

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. Under section 1 of the *Residential Tenancy Branch Guideline* ("*RTB Guideline*"), tenants are responsible for the removal of garbage at the end of tenancy, unless an agreement exists to the contrary.

Upon review of the photographs and testimony of the parties I am satisfied that the tenant left the rental unit contrary to section 37(2) of the *Act* and section 1 of the *RTB Guideline*. However I find that the landlord has provided insufficient evidence to prove the actual amount required to clean the unit and remove the garbage. For this reason, I dismiss this portion of the landlord's claim.

I find the landlord has provided insufficient evidence to prove the garbage can or mop were damaged as a result of this tenancy and therefore dismiss this portion of the landlord's claim.

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on October 31, 2016. Pursuant to section 30 of the *RTB Guideline*, neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties. The parties in this case did not mutually agree in writing to end the fixed term tenancy. Instead the tenant indirectly alleged cause, specifically a breach of the tenancy agreement.

A tenant ending a fixed term tenancy for cause is required to provide proper written notice of breach of a material term to the landlord. Notice must include a deadline the breach must be repaired by and notification the party will end the tenancy if the breach is not rectified by the deadline. I find the tenant provided insufficient evidence to establish he provided proper notice of a breach of a material term of the tenancy agreement. I find in the absence of a written mutual agreement to end the tenancy or proper written notification of a breach, the tenant ended this tenancy contrary to the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenant was in breach of his fixed term tenancy agreement because he vacated the rental premises prior to the October 31, 2016 date specified in that agreement. As such, the landlord is entitled to compensation for losses the landlord incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In situations in which the tenant has vacated the unit without prior written notice, the landlord must try to rent the rental unit again as soon as practicable.

Because the tenant vacated only two days prior to month end, I find the landlord did not have a reasonable opportunity to re-rent the unit by October 1, 2016 and therefore award the landlord \$950.00 for loss of October rent.

Tenant Claim

Sections 23, 24, 35 and 36 of the *Act* establish that joint move-in and move-out condition inspections must be conducted and reports of inspections must be issued to the tenant. When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, she lost her right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The landlord received the tenant's forwarding address on October 5, 2016 but did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and she failed to return the tenant's security deposit within 15 days of having received the forwarding address, section 38 of the *Act* requires that the landlord pay the tenant double the amount of the deposit, in total \$950.00.

I dismiss the remainder of the tenant's monetary claim. I find the tenant has failed to meet his onus in proving, on a balance of probabilities, the four elements listed above. Particularly, the tenant has provided insufficient evidence to establish that any remaining loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement.

Set Off Claims

The landlord has established a \$950.00 monetary claim therefore in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the \$475.00 security deposit in partial satisfaction of the monetary award and find the tenant responsible for the balance due \$475.00.

Item	Amount
October rent	\$950.00
Security deposit	(\$475.00)
Total Monetary Claim	\$475.00

The tenant has established a claim of \$950.00.

Item	Amount
Return of security deposit	\$475.00
Security deposit penalty	\$475.00
Total Monetary Claim	\$950.00

Setting off the amounts owed (\$950.00 – \$475.00) I order pursuant to section 67 of the *Act*, that the landlord pay the tenant \$475.00.

Item	Amount
Landlord Claim	\$475.00
Tenant Claim	\$950.00
Total Monetary Order	\$475.00

As both parties breached the *Act*, I find that the neither are entitled to recover the filing fee.

Conclusion

After setting off the claims made against each other and accounting for the security deposit paid, I find the landlord owes the tenant **\$475.00**, and a monetary order has been granted to the tenant in those terms.

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