



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlord applied requesting a monetary order for damage to the unit; a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to keep all or part of a pet damage deposit or security deposit, and to recover the cost of the application fee.

The Tenant applied for compensation for damage or loss under the Act, regulations or tenancy agreement; for the return of double the security deposit and to recover the cost of the application fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to compensation due to damage to the rental unit?
- Can the Landlord retain the security deposit in partial satisfaction of the claim?
- Is the Tenant entitled to double the security deposit?
- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement?
- Are the parties entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on September 4, 2015, as a fixed term tenancy that continued until June 4, 2016. Rent in the amount of \$700.00 was due on the first day of each month. The Tenant paid a security deposit of \$700.00 to the Landlord.

The Parties testified that the Tenant moved out of the rental unit on June 4, 2016. The Tenant left some of her possessions behind in the unit in anticipation of moving back into the rental unit a couple of months later. The parties agreed to leave the utilities in the Tenants name, and the Landlord would pay the utility costs for the months that the Tenant was not there.

Tenant's Application

Security Deposit

The Tenant is seeking the return of double the security deposit. The Tenant submitted that the Landlord did not perform a move in or move out inspection, and failed to return the security deposit within 15 days from the end of the tenancy.

The Tenant testified that she moved out of the rental unit on June 4, 2016. The Tenant testified that she provided her forwarding address to the Landlord in writing. She testified that the Landlord sent her a cheque dated September 12, 2016, in the amount of \$96.19. The Tenant has not cashed the cheque.

The Tenant testified that she did not reach an agreement with the Landlord that the Landlord could retain any amount of the security deposit.

In response the Landlord confirmed that she did not conduct a move in or move out inspection with the Tenant. The Landlord confirmed that she received the Tenants forwarding address and that she did not return the deposit within 15 days of receiving the Tenant's forwarding address.

Utilities

The Tenant is seeking to recover \$336.19 for utility costs. The Tenant testified that she left the utilities in her name for 3 months after she moved out. She testified that in anticipation of entering into a new tenancy agreement with the Landlord a few months later, she kept the utilities in her name to save the Landlord and Tenant the cost of hook up charges. The Tenant testified that the parties agreed to this arrangement, and that the Landlord owes her \$336.19 for the utility costs. The Tenant testified that she asked the Landlord to pay her for the utilities but the Landlord has not.

In response, the Landlord confirmed that there was an agreement to keep the utilities in the Tenant's name. The Landlord testified that she did not pay the Tenant for the utility costs.

Registered mail costs

The Tenant is seeking to recover \$20.00 the cost for serving hearing documents using registered mail. The cost for serving documents for dispute resolution is not a cost that the Act specifically permits. The Act specifically permits an award for the cost of the filing fee only. The Tenant's request is dismissed.

Landlord's Application

Security Deposit

The Landlord is seeking to keep the security deposit in partial satisfaction of her claims.

Tile floor

The Landlord is seeking approximately \$2,500.00 for the cost of replacing a tile floor in a bathroom. The Landlord testified that floor tiles were stained. The Landlord testified that the tiles are approximately five years old.

The Landlord provided a black and white photocopied photograph taken in December 2017. The Landlord indicates that the photo shows a stain on the tile near the toilet.

The Landlord provided a copy of an email dated January 29, 2017, which provides a quote of \$2,000.00 for the labour cost of replacing the floor. The email indicates there are a few darker tiles around the toilet perhaps discolored by the water over time. The email indicates the remainder of the tiles appear normal.

Kitchen Faucet

The Landlord is seeking the amount of \$188.12 to replace a kitchen faucet. The Landlord testified that the Tenant broke the kitchen faucet. The Landlord testified that the faucet was approximately two years old when the Tenant moved in. The Landlord provided a receipt showing the cost of a faucet in the amount of \$124.00. The Landlord did not provide any evidence showing a damaged faucet.

In response, the Tenant testified that the kitchen faucet was working fine. She testified that the only problem was the hot/ cold indicator had come loose and would not stay on.

Missing Items

The Landlord testified that there are items missing from the rental unit. The Landlord testified that a floor mop, hair dryer, brush, and blender are missing from the unit.

The Landlord did not provide a list of items that were provided to the Tenant at the start of the tenancy and did not provide photographic evidence of the items. The Landlord provided a receipt for the replacement cost of the items.

The Tenant testified that she did not take the Landlord's possessions.

Propane Tank

The Landlord testified that the Tenant is responsible for the cost to fill a propane tank. The Landlord testified that the tank was provided full of propane and the Tenant did not fill it before moving out. The Landlord is seeking \$47.03 for the cost of propane. The Landlord provided a receipt for the propane.

In response, the Tenant testified that she never used the barbeque.

Bathroom Tub and Shower

The Landlord is seeking \$195.00 for the replacement cost of the shower control. The Landlord testified that calcium corroded the stainless steel and the drain is badly corroded. The Landlord testified the unit uses well water. The Landlord provided a receipt for the cost of replacing a water filter, reassembly of the shower faucet and replacing a toilet seal. The Landlord provided a black and white photocopy of a picture of the showerhead.

The Tenant responded that she did not damage the shower control.

Painting the Kitchen Cabinet

The Landlord testified that the paint on the kitchen cabinet was chipped and the Landlord had to repaint the cabinet. The Landlord is seeking \$300.00 for the cost of repainting the cabinet.

In response, the Tenant submitted that she did not chip the cabinet and that the chipped paint was there when she started her second tenancy with the Landlord.

Driveway

The Landlord is seeking \$200.00 for repair to erosion and oil on the driveway. The Landlord testified that she has not paid to have it repaired but was informed that it would cost \$200.00. The Landlord provided a black and white photograph of the driveway.

In response, the Tenant testified that she is unaware of what was eroded. She submitted that many Tenants have come and gone from the driveway.

Cleaning

The Landlord is seeking compensation for cleaning the rental unit. The Landlord submitted that she spent two weeks cleaning the rental unit after the Tenant moved out. The Landlord indicated there was pitch on the floors.

In response, the tenant submitted that she left the rental unit clean. She testified that she hired a cleaner to clean the unit. The Tenant submitted that she is not responsible for pitch on the laminate floors.

The Landlord did not provided any photographic evidence of the state of repair of the rental unit at the end of the tenancy.

Storage of Tenants Belongings

The Landlord is seeking \$225.00 for storing the Tenant's possessions for 9 weeks. The Landlord testified that after the Tenant moved out she left bins, pots, pans, dishes and a massage table behind in the unit. The Landlord testified that she did not agree to store the items for the Tenant. The Landlord is seeking \$100.00 per month for storage.

The Landlord provided a copy of an email sent to the Tenant on August 8, 2016, stating that rental unit has been rented out for September 1, and asks the Tenant to come remove her possessions that week, or later in the month.

The Landlord testified that the compensation she is seeking is based on the amount a storage unit would charge. The Landlord provided a copy of an email sent to the Tenant on August 8, 2016, stating she has rented the unit and asking the Tenant to remove her possessions.

In response, the Tenant acknowledged she moved out on June 4, 2016, and left some possessions in the unit, as she did the previous year. The Tenant testified that she was planning to return to the unit to resume a tenancy. The Tenant testified that when she decided to not renew the tenancy, she came at her earliest convenience to retrieve her possessions. The Tenant testified she removed her possessions in August.

Ferry Costs

The Landlord is seeking \$170.00 for the cost of taking the ferry to purchase a new kitchen faucet.

Registered Mail Costs

The Landlord is seeking to recover the cost for serving hearing documents using registered mail. The cost for serving documents for dispute resolution is not a cost that the Act specifically permits. The Act specifically permits an award for the cost of the filing fee only. The Landlord's request is dismissed.

Analysis

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new Tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Section 21 of the Residential Tenancy Regulation states:

in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Tenant's Claims

Security Deposit

I find that the Landlord failed to repay the security deposit to the Tenant or make an application for dispute resolution against the security deposit within 15 days of the date the Tenant provided her forwarding address. The Landlord also failed to conduct a move in or move out inspection of the rental unit with the Tenant.

There was no written agreement that the Landlord could retain all or part of the security deposit. Consequently, the Landlord's right to claim against the security deposit is extinguished. Pursuant to section 38 (6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit. I award the Tenant \$1,400.00 which is double the amount of the security deposit.

Utilities

The Landlord acknowledged that she did not pay the Tenant for the utility costs that were incurred after the Tenant moved out of the unit. I find that the Landlord is responsible to pay the utility costs of \$336.19.

Landlord's Claims

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the Landlord failed to perform a move in and move out inspection with the Tenant as required by the Act. The Landlord has testified about damage and has provided documentary evidence of damage to the rental unit after the Tenant moved out, but I find there is no evidence to establish the condition of the rental unit at the time the Tenant moved in. The Tenant disputes the majority of the Landlord's claims regarding damage and cleaning. Pursuant to section 21 of the Residential Tenancy Regulation the Landlord must provide a preponderance of evidence on the state of repair and condition of the rental unit at the start of the tenancy.

Tile floor

The Landlord's evidence indicates that there are a few darker tiles around the toilet perhaps discolored by the water over time. The email indicates the remainder of the tiles appear normal. I find that the Landlord's photograph evidence of the tile floor around the toilet is of such poor quality that it is of no probative value.

The Landlord has provided insufficient evidence of damage to the floor that would require replacement of the entire floor. The Landlord has provided insufficient evidence of the condition of the floor when the Tenant moved into the rental unit and that the Tenant is responsible for the staining of the floor tiles.

The Landlord's claim for the floor tiles is dismissed.

Kitchen Faucet

The Landlord has provided insufficient evidence of the condition of the faucet when the Tenant moved in and insufficient evidence that the Tenant is responsible for neglect to the faucet beyond normal wear and tear.

The Landlord's claim for the replacement of the faucet is dismissed.

Ferry Costs

The Landlord's claim for the replacement cost of the kitchen faucet was dismissed. The Landlord's claim to recover the cost for taking the ferry to purchase a new kitchen faucet is dismissed.

Missing Items

The Landlord did not have an itemized list of possessions that were provided to the Tenant at the start of the tenancy and did not provide photographic evidence of the items. The Tenant testified that she did not take the items.

There is insufficient evidence from the Landlord to establish that the Tenant is responsible to replace the missing items.

The Landlord's claim for the missing items is dismissed.

Propane Tank

There is insufficient evidence from the Landlord that the Tenant was provided a full propane tank at the start of the tenancy and that the Tenant agreed to fill the tank at the end of the tenancy. The Tenant denied ever using the propane. The Landlord provided insufficient evidence that the Tenant used the propane.

The Landlord's claim for the cost to fill the propane tank is dismissed.

Bathroom shower control

The Landlord has provided insufficient evidence of the condition of the bathroom shower control when the Tenant moved in and that the Tenant is responsible for neglect to the faucet beyond normal wear and tear.

The Landlord's claim for the replacement of the shower control is dismissed.

Painting the Kitchen Cabinet

The Landlord provided a photograph showing chipped paint on a kitchen cabinet located by the sink. The Tenant submitted that the chipped paint was there when she started her second tenancy with the Landlord. The Landlord rented out the unit between the Tenants first and second tenancy. I find that the Landlord failed to prove the condition of the cabinet at the start of the tenancy.

The Landlord's claim for \$300.00 for painting the cabinet is dismissed.

Driveway

I find the photograph of the driveway is black and white and it is very dark and of poor quality. I find that the photograph has no probative value.

The Landlord did not establish the condition of the driveway at the start of the tenancy and has not had the repair completed. The Tenant submitted that many Tenants have come and gone from the driveway.

The Landlord's claim for the cost to repair the driveway is dismissed.

Cleaning

The Landlord did not provide any photographic evidence to support her testimony that the rental unit was left unclean and that she spent 2 weeks cleaning it. The Tenant testified that she left the rental unit clean and that she hired a cleaner. When parties provide opposing but equally believable testimony on an issue, the burden of proof rests with the applicant.

I find there is insufficient evidence from the Landlord that the Tenant left the rental unit unclean. The Landlord's claim for \$300.00 to clean the rental unit is dismissed.

Storage

I find that the Tenant left behind some of her possessions in anticipation of re-renting the unit a few months later. The Landlord asked her to retrieve her possessions in early August 2016, and the Tenant testified that she retrieved her belongings in August.

The Landlord's email dated August 8, 2016, makes no mention of storage costs. I find that it is more likely than not that the Landlord agreed to keep the Tenant's possessions in anticipation of the Tenant returning to the unit.

I find that the utilities that were kept in the Tenant's name supports that the Tenant was intending to return, and this also suggests that there was an agreement for the Landlord to hold the Tenant's items. It appears to me that when the Tenant did not enter into a new tenancy agreement, the Landlord decided to pursue storage costs.

I find that the Tenant retrieved her items in August 2016, shortly after the Landlord asked her to remove them. I find that there was no agreement with the parties that the Tenant would pay storage costs. The Landlord's claim to be compensated for storing items is dismissed.

Security Deposit

As set out earlier in this decision, the Landlord failed to repay the security deposit to the Tenant or make an application for dispute resolution against the security deposit within 15 days of the date the Tenant provided her forwarding address. The Landlord also failed to conduct a move in or move out inspection of the rental unit with the Tenant. The Landlord's right to claim against the security deposit is extinguished. The Tenant is awarded double the amount of the security deposit. The Tenant is ordered to destroy the \$96.19 cheque she previously received from the Landlord.

Amounts Awarded

The Landlord was not successful with any of her monetary claims.

The Tenant was successful with her claim for the return of double the security deposit, and the cost of utilities.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with her application, I order the Landlord to repay the Tenant for the cost of the filing fee for this hearing.

The Tenant is granted a monetary order in the amount of \$1,836.19 comprised of the return of double the security deposit; the cost of utilities, and the filing fee.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord's application for compensation was not successful. The Tenant's application for the return of double the security deposit, and the cost of utilities was successful.

I grant the Tenant a monetary order in the amount of \$1,836.19. This order must be served on the Landlord and may be enforced in Provincial 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: May 26, 2017

Residential Tenancy Branch