



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNSD, FF
Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing, I noted that the landlord's Application for Dispute Resolution named the tenant and his wife as respondents to this claim. However, I also noted that the tenancy agreement did not list the tenant's wife as a tenant nor did she sign the tenancy agreement. As a result, I amend the landlord's Application for Dispute Resolution to exclude the tenant's wife as a respondent.

The landlord submitted that he had not received an Application for Dispute Resolution or evidence from the tenant.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the Residential Tenancy Act (Act) and his evidence by registered mail on January 6, 2017 and January 11, 2017 respectively in accordance with Section 89. Section 90 of the Act deems documents served in such a manner to be received on the 5th day after being mailed.

The landlord submitted that he had not received any such mailings. With the agreement of both parties I reviewed Canada Post website and confirmed the tenant had served the landlord as described and that the packages, after two notices had been provided by the post office, were returned as unclaimed.

The landlord acknowledged that he may have been away at the time and that the person who stays there sometimes when he is away would not have accepted any registered mail on his behalf.

I have reviewed the tenant's file and note that since the landlord has filed a claim to retain the security deposit and the tenant's Application is solely for the return of double the amount of the security deposit I find there is no prejudice to the landlord in proceeding in the absence of receiving the tenant's Application.

While both parties provided a substantial volume of evidence regarding several issues during the tenancy, this decision only refers to submissions relevant to the claims in each respective Application.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to and cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on June 30, 2014 for a month to month tenancy beginning on July 1, 2014 for a monthly rent of \$1,425.00 due on the 1st of each month with a security deposit of \$700.00 paid. The parties agree the tenancy ended on October 31, 2016.

The landlord provided a copy of an email dated November 3, 2016 from the tenant to the landlord providing the landlord with his forwarding address and requesting the landlord to return his deposit to that address or by e-transfer.

The landlord seeks compensation for the costs of cleaning the rental unit and the costs to repair damage in the rental unit that the landlord attributes to the tenant. The landlord seeks the following compensation:

Description	Amount
General cleaning	\$165.00
Screen replacements (2)	\$56.00
Repair kitchen cabinet hinge (broken in half)	\$31.95
Replacement halogen bulbs	\$53.62
Floor replacement (600 sq ft)	\$4,659.23
Total	\$4,965.80

In support of these claims the landlord has submitted the following documentary evidence:

- A copy of a Condition Inspection Report for the rental unit on the last day of the tenancy with the new tenant moving in. The Report indicates a number of deficiencies including these specifically identified issues: "Repair deadbolt damage. Replace 6 halogen bulbs, cleaned condo again. New hinge for cabinet. Cleaned light fixtures; bought 2 new screens; replace door seal on washer. Repair walls & paint";
- A CD containing several photographs of the condition of the rental unit at the end of the tenancy.
- Copies of the following receipts; invoices; or estimates:
 - From a local hardware store for halogen lights and a cabinet hinge;

- From a cleaner for cleaning services completed on November 4, 2016; and
- From a local hardware store for the costs to purchase and install new flooring.

The landlord confirmed that a condition inspection report was not completed for either the start or end of this tenancy. The landlord testified that the rental unit was built in 2009 and that he and his son lived in the unit until this tenancy began.

The tenants submit that they had cleaned the rental unit as well as they could but that they could not get the stove top any cleaner without using something abrasive that may have damaged the surface. The tenant submitted two written statements from witnesses in regard to cleaning. In one statement the writer stated that she had noted that some light bulbs were burned out but that bulbs were left on the kitchen counter. In another statement the writer confirmed that she could not remove a crayon mark on the wall.

The tenant acknowledged they caused the damage to the screens but attributed it to wear and tear.

In regard to the landlord's claim for the cabinet hinge, I note the tenant submitted an email, dated August 24, 2016 to the landlord that the cabinet hinge keeps coming off and that he doesn't know what to do about it.

In response to the landlord's claim for flooring replacement, the tenant submitted that they had wall to wall carpeting covering the floor in the living in room and that while he acknowledges scratches where their table was he attributes it to normal wear and tear.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 23 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit on the day the tenant is entitled to possession of the unit or on another mutually agreed upon day. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 23(4) requires the landlord to complete a Condition Inspection Report with both the landlord and tenant signing the report. Pursuant to Section 18 of the Residential Tenancy Regulation the landlord must provide a copy of the Report to the tenant within 7 days after the inspection has been completed.

Section 24 of the *Act* states that the right of the landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord does not comply with the

requirement to offer the tenant 2 opportunities to attend the inspection; if the landlord has provided 2 opportunities the landlord does not participate in the inspection; or complete the condition inspection report and give the tenant a copy as required under the Regulation.

Section 35 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon date. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 17 of the Residential Tenancy Regulation stipulates that the landlord must offer a first opportunity to schedule the condition inspection by proposing one or more dates and times. If the tenant is not available at the time proposed the tenant may propose another time that the landlord must consider. If the time proposed by the tenant is not acceptable the landlord must propose a second opportunity by providing the tenant a notice in the approved form. The approved form is available on the Residential Tenancy Branch website.

Section 36(2) stipulates that unless the tenant has abandoned the rental unit, the right .extinguished if the landlord has not complied with the requirements of Section 35 of the *Act* and Section 17 of the Regulation; or does not participate in the inspection or having completed the inspection does not complete a Condition Inspection Report and give a copy to the tenant within 15 days after it is completed and the landlord receives the tenant's forwarding address.

As the landlord has confirmed that he did not complete a move in or move out Condition Inspection Report, I find the landlord has failed to comply with his obligations under Sections 23 and 35 of the *Act*. As a result, I find the landlord has extinguished his right to claim against the security deposit held since the start of this tenancy, pursuant to Sections 24 and 36

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

In circumstances such as these, where the landlord's right to claim against the security deposit has been extinguished, pursuant to Sections 24 or 36(2) of the *Act*, the landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing.

As the landlord provided evidence he received the tenant's forwarding address on November 3, 2016, I find the landlord had until November 18 to return the deposit. I find that the landlord did not comply with Section 38(1) of the *Act*, as the landlord has not yet returned the deposits.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the landlord did not comply with Section 38(1) of the *Act*, I find that the landlord must pay double the pet damage deposit and security deposit to the tenant, pursuant to Section 38(6).

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

As I have found above that the landlord failed to complete a move in Condition Inspection Report and the landlord has provided no other evidence of the condition of the rental unit at the start of the tenancy, I find the landlord has provided no evidence to establish the condition of the unit at the start of the tenancy.

In addition, while the landlord has failed to complete a move out Condition Inspection Report, the landlord has submitted several photographs of the condition at the end of the tenancy. As the landlord cannot provide evidence of the condition of the rental unit at the start of the tenancy, in relation to his claim for compensation for any of the repairs, I find the landlord has failed to establish that any of the damage was caused during this tenancy or that it was caused by anything other than reasonable wear and tear. As such, I dismiss the landlord's claim for compensation for all damage to the rental unit with two exceptions.

I find, from the tenant's own testimony that they are responsible for the landlord's need to replace the screens in two windows, as there is no evidence before me from either party that it is reasonable to expect damage a screen or a cabinet hinge if used normally and in a responsible way. I find the landlord is entitled to compensation sought for this part of his claim

As the tenant's own witness statement acknowledges that there were some lights burned out, I find the tenant's submissions confirm the landlord's claim for replacement bulbs. Despite the same statement saying that there were bulbs left on the counter, I find it would have been reasonable for the tenant to provide evidence of the purchase of bulbs left behind. As a result, I find the landlord is entitled to compensation for the replacement lightbulbs as claimed.

And finally, in regard to cleaning, I find that since the landlord did not complete a move out Condition Inspection Report with the tenant there is no record of the condition when the tenant returned possession of the rental unit to the landlord. A Condition Inspection Report completed by an incoming occupant may provide a record of the new occupant's displeasure with the cleanliness of the unit they are moving into but it does not provide a record of whether or not the exiting tenants have fulfilled their obligations under Section 37 of the *Act*.

While, in this case the landlord has also provided photographs, I find that, for the most part, the landlord has failed to provide any evidence that the unit required cleaning in the amount of \$165.00. As a result, I dismiss this portion of the landlord's claim.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$141.57** comprised of \$56.00 replacement screens; \$31.95 replacement hinge; \$53.62 replacement halogen bulbs. I dismiss the landlord's claim to recover the fee paid by the landlord for his Application as he was largely unsuccessful in his claims.

Also based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,500.00** comprised of \$1,400.00 double the amount of the security deposit and the \$100.00 fee paid by the tenant for his Application.

I grant a monetary order in the amount of **\$1,358.43** to the tenant representing the difference between the two awards above. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: June 05, 2017

Residential Tenancy Branch