



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND 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 unit, site, or property, money owed or compensation for 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 the filing fee for this application from the tenant pursuant to section 72.

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.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the Act, I find the tenant was duly served with the landlord's Application and evidence. The landlord testified in the hearing that he did not have the opportunity to view the video submitted by the tenant for this hearing as the tenant did not submit the evidence until June 8, 2017. Accordingly, I am excluding the tenant's late evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damage to the unit, site, or property, monetary loss, or money owed?

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

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of their claim?

Background and Evidence

The landlord testified regarding the following facts. This fixed-term tenancy began on June 1, 2016, and ended on January 31, 2017. Monthly rent was set at \$1,700.00 plus \$75.00 for utilities, and the landlord collected a security deposit of \$850.00, which the landlord still holds.

The landlord requested monetary compensation in the amount of \$722.50, as follows:

Vacuum Truck Service (invoice dated February 7, 2017)	\$472.50
Repair to Sump Pump (invoice dated February 7, 2017)	250.00
Total Monetary Award Requested	\$722.50

The landlord testified that this multi-suite house was brand new in May 2016, and that the tenants had moved in a month later as the first tenants to occupy the home. The landlord included in evidence a copy of the condition inspection report indicating that the suite was brand new.

The tenancy ended by way of mutual agreement on January 31, 2017, and the landlord's new tenants moved in on February 4, 2017. The landlord testified that the tenants discovered that the toilets would not flush, and a plumber was called. Upon investigation, the plumber discovered that the toilet was obstructed by hair and sanity products, which the landlord attributes to the tenant in this application. The landlord testified that the suite was a separate, legal suite which had its own sewage line, and the sump pump was seized up. The landlord submitted invoices dated February 7, 2017 to support their monetary claim for \$722.50. The landlord admitted that no move-out inspection was done after the tenants moved out on January 31, 2017.

The tenant testified in this hearing that the incident occurred on February 7, 2017, after the tenancy had ended between both parties. The tenant testified that a move-out inspection was completed on January 31, 2017, but no condition inspection report was filled out by either party. The tenant testified that he did not use sanity products, and that the landlord did not submit any evidence to support that the issue was caused by him, and not the new tenants. The tenant requested the return of his security deposit, plus compensation as the landlord failed to return the deposit to him after he had

provided the landlord with his forwarding address by text message within a week of moving out.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The tenant disputed the testimony of the landlord that he had caused damage to the toilet and sump pump, resulting in a monetary loss of \$722.50 for the landlord.

Although the landlord did provide invoices and photos to support his claim, the landlord did not provide sufficient evidence to demonstrate that the damage was caused by the tenant in this application. The invoice submitted by the landlord indicates that the “sanity pump plugged with papers and hygiene products caused pump failed”, but no reports were submitted to support how or when this had occurred. In the absence of this information, I find that there is no way to determine whether the damage was caused by the new, or old tenants, or both. Accordingly I dismiss the landlord’s monetary claim for damage.

I dismiss the landlord's application to recover the filing fee for this application.

Section 38(1) of the *Act* requires that 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 landlords 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 tenant 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 tenant’s provision of the forwarding address.

In this case, the landlords applied for dispute resolution on February 10, 2017, within the 15 day time limit for doing so. I order that the landlord return the tenant's security deposit as the landlord was not successful in their monetary claim. I find the tenant is not entitled to a monetary award as the landlord had filed their application within the allotted time period.

Conclusion

The landlord's entire application is dismissed.

I issue a Monetary Order in the amount of \$850.00 in the tenant's favour, which allows for the return of the tenant's security deposit.

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.

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: July 19, 2017

Residential Tenancy Branch