



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- 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 were represented at the hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords were represented by their agent, OC (the "landlord"). The tenant was represented by her agent and spouse, LR (the "tenant").

As both parties were in attendance I confirmed that there were no issues with service. The tenant confirmed that he received the landlords' application for dispute resolution and evidentiary materials. The tenant testified that he did not submit any evidence. Pursuant to sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlords' application and evidence.

Issue(s) to be Decided

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the landlords' claims and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began in October, 2015 and ended on October 31, 2016. A security deposit of \$1,875.00 was paid by the tenant at the start of the tenancy and is still held by the landlords.

The landlord testified that they first received written notice of the tenant's forwarding address by email on February 17, 2017. The landlord said that the rental unit required cleaning, repairs and maintenance after the tenant vacated. The landlord claims the amount of \$1,854.67 under the following heads:

Item	Amount
Kitchen and Closet Door Track	\$70.00
Kitchen Ceiling Light Fixture	\$32.42
Light Bulb Replacement (35 pieces)	\$245.00
Window Handle Replacement	\$107.10
Materials and Labour	\$252.00
Spot Painting	\$525.00
Job Arrangement Fee	\$123.15
Flooring Damage	\$500.00
TOTAL	\$1,854.67

The parties completed a move-out inspection on October 31, 2016 and prepared a condition inspection report. A copy of the condition inspection report was submitted into written evidence. The condition inspection report includes a handwritten note that "tenant agreed for following deductions/repairs" followed with a list of three deficiencies; the replacement of lightbulbs, the window handles, and the door tracks. Each of the three items is initialled by LR, the tenant's spouse who confirmed he was acting as the tenant's agent at the time.

The landlord said that the acknowledgement of the deficiencies and the signature on the condition inspection report constitutes written permission by the tenant that the landlord may deduct the cost of repairs and cleaning from the security deposit. The landlord testified that at the time of the inspection the cost of repairs was not known. The landlord said they subsequently received invoices and receipts and submitted them into written evidence. The landlord said that the tenant was advised of the cost of repairs, maintenance and cleaning that would be deducted from the tenant's security deposit on February 16, 2017. The tenant responded to the correspondence saying that they dispute the landlord's right to deduct any amount from the security deposit.

The landlord submitted a copy of the tenancy agreement into written evidence. Clause 17 of the tenancy agreement provides that the tenant will be charged an administration fee of 10% or a minimum \$25.00 for arranging jobs which are the tenant's liability or obligation.

The tenant testified that he believes that the landlords are deceitful in their conduct. The tenant said that the landlord took much longer to perform the move-out inspection than when they were initially moving in. The tenant believes that the move-in inspection was completed in 5 minutes while the move-out inspection took close to 4 hours. The tenant testified that he had a poor understanding of the inspection process and did not know that he was signing or initialling a document which would be binding. The tenant said that he agreed to the replacement of the lightbulbs in the rental unit, which he believed should be no more than \$200.00, but did not agree to any other repairs. The tenant said that the rental unit was filled with deficiencies when the tenancy began and he should not be held accountable for the damages at the end of the tenancy. The tenant also found that the fact that the sum of the items claimed by the landlord being close to the security deposit amount to be suspicious.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I find that the tenant's agent, LR initialling each of the items listed on the condition inspection report as to be deducted and signing the report to constitute written authorization that the landlord may deduct a portion of the security deposit. I do not find the tenant's evidence to be credible or persuasive. I accept the evidence of the parties that the condition inspection was signed by the landlords and tenant. I do not accept the tenant's position that he did not understand the binding nature of signing an agreement nor do I find his argument that the report was signed based on fraud to be credible. While I accept that the move-in and move-out inspection took different lengths of time to complete I find the tenant's testimony that the move-in was completed in five minutes and the move-out over four hours to have no air of reality.

I accept the landlord's evidence of the cost of the items agreed to by the tenant as totalling, \$706.52. I therefore find that the landlords are authorized to retain this amount from the security deposit for this tenancy.

I accept the landlord's evidence that a job arrangement fee of 10% or a minimum of \$25.00 applies for jobs arranged for the tenant's benefit. I find that this is a clause in the tenancy agreement signed by the parties and thus a binding provision of their agreement. I accept the landlord's evidence that a fee of \$123.15 applies for the work arranged by the landlord on the tenant's behalf. I find that the landlords are authorized to retain this amount from the security deposit.

I accept the landlord's evidence that pursuant to the condition inspection report the tenant agreed to patch all of the deficiencies on the walls of the rental unit. I accept the landlord's evidence that the tenant failed to perform all of the wall repairs as agreed and the landlord needed to perform the repairs themselves. I accept the landlord's evidence that the cost of the spot painting and repairs is \$525.00 and authorize the landlord to deduct this amount from the security deposit.

I find that there is insufficient evidence in support of the landlord's claim for the cost of flooring repairs. I find that this is not a repair authorized by the tenant in the condition inspection report. I accept the tenant's evidence that they did not give written consent that the landlord may retain a portion of the security deposit for this repair. I find that there is little evidence in the condition inspection report that the floors were damaged by the tenant in excess of the expected wear and tear during a tenancy. The landlord did not submit any additional written evidence in support of why these repairs were necessitated by the tenant's violation of the Act, regulation or tenancy agreement. I find there is insufficient evidence in support of this portion of the landlord's claim and dismiss it accordingly.

I find that the landlords are entitled to withhold the amount of \$1,354.67 from the security deposit for this tenancy.

Based on the undisputed evidence before me, I find that the landlords have failed to return the tenant's security deposit in full within the 15 days of February 17, 2017, provided under section 38(1)(c) of the *Act*. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a \$1,040.66 Monetary Order, double the value of the security deposit paid for this tenancy, less the amount the landlords are authorized to retain. No interest is payable over this period.

As the landlord's application was successful I find that the landlords is entitled to recover the \$100.00 filing fee for this application from the tenant.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$940.66 under the following terms:

Item	Amount
Double Security Deposit $([\$1,875 - 1,354.67] \times 2)$	\$1,040.66
Less Filing Fee to Landlord	-\$100.00
TOTAL	\$940.66

The landlords must be served with this Order as soon as possible. Should the landlords 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 27, 2017

Residential Tenancy Branch