



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RY-COURT FINANCIAL SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties attended and gave sworn testimony. The landlord said they served the Application for Dispute Resolution on the tenants by registered mail. The tenant Y. B. who attended said his co-tenant did not receive a copy of the Application as he moved out a long time ago and left no forwarding address. He got the documents but he had no means of contacting the tenant A.Z. I find the Application was served pursuant to section 89 of the Act on Y.B. but the tenant A.Z. was not served. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that there is unpaid rent, and the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Background and Evidence:

The tenant Y.B. attended the hearing and he and the landlord were given opportunity to be heard, to present evidence and to make submissions. The landlord stated that the tenancy commenced October 1, 2014, that monthly rent was \$1850 and security deposits, including fob deposits of \$200, were paid by both tenants. A.Z. paid \$562.50 and Y.B. also paid \$562.50. The landlord still has the deposits in trust although Y.B. made an unsuccessful Application to have his deposit returned but was unsuccessful as he had the incorrect name of the landlord. The tenant noted that his co-tenant A.Z. left over a year ago and the landlord said they received no notice of him ending the tenancy and received no forwarding address.

The tenant disputed the landlord's claim for full rent for May 2016 as he said the landlord had agreed it would be pro-rated for the extra 8 days he over-held in May. The landlord did not dispute he agreed to pro-rate the rent for May but said the problem is that the tenant did not clear out the storage locker until May 16, 2016. The tenant said it was belongings of a previous tenant who was a friend.

The landlord also claims \$1500 to repair a damaged refrigerator door. He provided many emails in evidence of his efforts to have the repair done more reasonably but the companies contacted said it was a unique finish and needed careful matching of paint and lacquer. The tenant said he also emailed photographs to various companies who said their estimate was less. However, none of them looked at the damage. The landlord said the condo was new May 17, 2012. The tenant said he did not know how the damage occurred and speculated it may have been caused by his co-tenant.

The tenant provided evidence that he sent his forwarding address on November 2, 2016 with a request for the return of his security deposit. The landlord said he did not return it for he is trying to get better estimates for repair of the damage. The landlord pointed out that this tenant is only entitled to one half of the deposit as his co-tenant paid half.

In evidence are emails between the parties, photographs, the forwarding address of Y.B., the tenancy agreement and deposit receipts.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

I find that there is over-holding rent in the amount of \$915 to May 15, 2016 when the tenant finally cleared all items out of the storage locker. Whether or not the items belonged to the tenant, I find the weight of the evidence is that he knew they were there and it is responsibility to give vacant possession of the premises including the storage area when he vacated. I find the landlord entitled to recover \$915 for over-holding rent.

In respect to the damage to the refrigerator door, I find awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that the tenants caused the damage as the tenant did not deny it happened during their tenancy. Although the tenant argued the repair could be done more reasonably, I find insufficient evidence to support his contentions. I find the alternate estimates were from individuals who had only looked at photographs of the damage. I find the landlord's evidence credible that this is an expensive, custom finish on this refrigerator in this relatively

new, high priced condo. I find the landlord entitled to recover \$1500 based on the best estimate he has received to date.

Section 38 of the Act requires the landlord to return the tenant's security deposit or to make an Application to claim against it within 15 days of the later of the tenant vacating and providing their forwarding address in writing. I find the tenant Y.B. vacated on May 15, 2016 and provided his forwarding address in writing on November 2, 2016 and his deposits have never been returned although the landlord agreed the tenants had returned their fobs on which the deposit was \$200 (\$100 each). I find the tenant entitled to twice his portion of the security deposit refunded as he retains his rights under section 38. I find his portion of the security deposit was \$462.50 plus \$100 fob deposit. I find he is entitled to recover \$925 plus \$100 pursuant to section 38.

I find the tenant A.Z. vacated early in the tenancy and has never provided a forwarding address. Pursuant to section 39 of the Act, I find the landlord is entitled to retain A.Z.'s security deposit and his right to the return of it is extinguished. As A.Z. was not served with the Application, the monetary order is issued against Y.B. only and his security deposit will be applied against it.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain Y.B.'s the security deposit as doubled under the Act. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Over-holding rent	915.00
Repair of refrigerator door	1500.00
Filing fee	100.00
Less security and fob deposit of tenant Y.B.	-1025.00
Total Monetary Order to Landlord	1490.00

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: August 02, 2017

Residential Tenancy Branch