



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing, conducted by a conference call, dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for compensation for damage or 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.

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to speak, present evidence, provide affirmed testimony and call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the parties' respective application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the respective application packages.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages and loss as claimed? ? Is the landlord entitled to retain all or a portion of the security deposit for this tenancy? Is the tenant entitled to a monetary award equivalent to double the value of his security deposit and pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to a monetary award for damages or loss as claimed? Is either party entitled to recover the filing fee for this application from the other?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in December, 2015. A security deposit of \$445.00 was paid at the start of the tenancy and is still held by the landlord. The monthly rent at the end of the tenancy was \$950.00. A condition inspection report was prepared and signed by both parties at the start of the tenancy. The tenant did not sign a condition inspection report at the end of the tenancy. The tenant moved out of the rental unit on April 1, 2017.

The landlord testified that the tenant did not leave until 4pm on April 1, 2017 and is thus responsible for rent for two additional days which the landlord calculates to be \$77.33. The landlord said that the tenant gave written notice of a forwarding address on the date he vacated.

The landlord said that the tenant was in a rush to vacate the rental unit and did not sign the condition inspection report which the landlord prepared. The landlord said that because the tenant left the unit, he did not give the tenant a copy of the report.

The landlord said that the rental unit required cleaning and submitted into written evidence invoices from a cleaning company and a carpet cleaning company for the total amount of \$681.25.

The tenant testified that he vacated the rental unit by 1pm on April 1, 2017. The tenant said that he was not provided with a copy of the condition inspection report to sign when vacating the rental unit and has not subsequently been provided with a copy. The tenant said that he gave written notice of the forwarding address to the landlord sometime in March, 2017 during the tenancy. The tenant said that he has incurred a loss of income of \$125.00 as he needed to take time off from work to file his application with the Tenancy Branch.

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 and pet damage 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 and pet damage deposit as per section 38(4)(a).

I accept the undisputed evidence of the parties that the tenancy ended on April 1, 2017. I find that the precise hour that the tenant vacated the rental unit to be irrelevant. The landlord filed his application to retain the security deposit on April 12, 2017 within the 15 days provided under the *Act*.

However, the parties have testified that the landlord did not provide a copy of a completed condition inspection report to the tenant at the end of the tenancy. Section 36 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

36 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I accept the undisputed evidence of the parties that the tenant was not provided with a completed copy of the condition inspection report. The landlord testified that the tenant was in a hurry and did not sign the report. The tenant testified that the landlord did not provide a draft report for signing when the inspection was performed. Both parties agree that the tenant was not provided with a copy of any condition inspection report. Therefore, I find that the landlord has extinguished any right to claim against the security deposit by failing to provide the tenant with a condition inspection report in accordance with the *Act*.

Based on the undisputed evidence before me, I find that the landlord had extinguished their right to apply to retain the security deposit for this tenancy and has failed to return the tenant's security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's 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 tenant is entitled to a \$890.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed testimony of the parties that the tenant vacated the rental unit on April 1, 2017. Residential Tenancy Policy Guideline 3 provides that a tenant is responsible for rent on a per diem basis if the tenant remains in possession of the rental unit after a tenancy agreement has ended. I find that the tenant is responsible for rent in the amount of \$31.67 for the one additional day of occupation. ($\$950/30 \times 1 \text{ day} = \31.67).

I find that the landlord has not shown on a balance of probabilities that he has suffered damages as a result of the tenant's actions. While I understand that the landlord has incurred costs in cleaning the rental unit I find there is insufficient evidence to show that this loss arose as a result of the tenant's violation of the *Act*, regulations or tenancy agreement and not the expected wear and tear from a tenancy. Consequently, I dismiss this portion of the landlord's claim.

The *Act* does not allow a party to recover the costs of pursuing an application such as recovering lost wages. Accordingly, I dismiss this portion of the tenant's claim.

As both parties have found limited success in their respective applications I find it appropriate that each party bears their own costs. I make no order for the parties to recover the filing fees for this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$340.37 under the following terms:

Item	Amount
Double Security Deposit (\$445.00 x 2)	\$890.00
Rent for April (1 day) (\$950/30 days=\$31.67)	-\$31.67
Total	\$858.33

The landlord must be served with 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.

The balance of the applications is dismissed.

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: September 11, 2017

Residential Tenancy Branch