



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on May 24, 2017 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on September 15, 2017 for:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Is the Landlord entitled to the costs claimed for damage to the unit?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on March 1, 2012 and ended on April 30, 2017. Rent of \$950.00 was initially payable on the first day of each month and by the end of the tenancy the rent had increased to \$1,059.81. At the outset of the tenancy the Landlord collected \$475.00 as a

security deposit. The Parties mutually conducted both a move-in and move-out condition inspection with condition reports completed and copied to the Tenant. The Tenant provided its forwarding address to the Landlord with the Tenant's notice to end tenancy given in March 2017. The Landlord has not returned the security deposit.

The Tenant claims return of the security deposit and does not waive any entitlement to return of double the security deposit.

The Landlord states that the Tenant left the carpet on the stairs damaged with a smell. The Landlord states that the carpet was new in 1998. The Landlord states that the carpet was not replaced and that another tenancy ensued after this tenancy with rent of \$1,500.00 and no rent reduction given for the state of the carpet. The Landlord claims \$966.00 as the estimated cost to replace the carpet.

The Landlord states that the Tenant's son and other guests of the Tenant damaged an outdoor play slide and an outdoor play table. The Landlord states that the outdoor play items were maybe 5 years old and made of durable plastic. The Landlord states that these items have not been replaced and the Landlord claims an estimated cost of \$134.39 for the slide and \$89.59 for the play table.

The Tenant agrees that they had shared use of the slide and table during the tenancy. The Tenant states that her son did use the picnic table while tobogganing outside. The Tenant states that she is unaware of any damage to the table. The Tenant states that there was no inspection conducted for the exterior of the unit and no damage to these items was noted in the move-out condition report. The Tenant states that the table and slide had been left outside the entire tenancy, including over winter months. The Tenant states that her research information about the product shows that they were outdoors in weather well below the temperatures recommended by the manufacturer and on a surface that was recommended against by the manufacturer. The Tenant states that the Landlord's child also used the items and would often drag them around the yard. The Tenant states that the damage was as a result of reasonable wear and tear.

Analysis

Section 38 of the Act provides 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 repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides as follows:

If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

Based on the undisputed evidence of the date of the end of the tenancy and receipt of the Tenant's forwarding address I find that the Landlord had until May 15, 2017 to make its application to claim against the security deposit or to return the security deposit. As the Landlord did not meet this deadline and as the Tenant does not waive its entitlement, I find that the Landlord now owes the Tenant double the security deposit plus zero interest of **\$950.00**. As the Tenant's application has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,050.00**.

Section 37 of the Act provides 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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Policy Guideline #40 sets the useful life of a carpet at 10 years. Given the undisputed evidence that the carpet was over 10 years old before the tenancy even started I find that there was no longer any useful life left to the carpet and therefore no loss in the value of the carpet. Further, the Landlord did not replace the carpet and incur costs nor did the Landlord provide any evidence of any rental income loss as a result of the state of the carpet. For these reasons I dismiss the Landlord's claim for the cost to replace the carpet.

Given the Tenant's evidence that the Tenant's son did use the table for playing, I find on a balance of probabilities that the Tenant did cause some damage to the table. However

considering the age of the item, its exposure to the elements of weather, the undisputed evidence that the Landlord's child also used the table, and the evidence that the Landlord did not replace the item I find that the Landlord has not substantiated that the Tenant caused the total loss claimed or that the costs claimed were either incurred or mitigated. Given the evidence of shared use of the slide and no other supporting evidence that the Tenant's son caused any damage to the slide, I find that the Landlord has not substantiated that the Tenant caused the damage to the slide. I therefore dismiss the claims in relation to the yard toys. As the Landlord's claim for any of the damage has had no merit I find that the Landlord is not entitled to retain any part of the security deposit. I also find that the Landlord is not entitled to recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$1,050.00**. If necessary, this order may be filed in the Small Claims 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: November 2, 2017

Residential Tenancy Branch