



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNR MNSD

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* ("the Act") for an order as follows:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security deposit pursuant to section 38 of the *Act*; and
- a return of the Filing Fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant D.E.G. attended the hearing. The landlord was represented at the hearing by agent A.D.G., while the tenants were represented at the hearing by advocate R.W. (the "tenant"). All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The tenant confirmed receipt of only the landlord's application to retain the security deposit and for a monetary award of \$1,125.00. I find that the tenants were duly served in accordance with the *Act* with the landlord's application and evidentiary package.

The landlord said that he wished to pursue a monetary application for \$3,746.68 however, he had not amended his original application to reflect this change. I find that the tenants would be unfairly prejudiced by this late amendment, because the tenant said he had prepared only to speak to the original application.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Is the landlord entitled to retain the security deposit?

Background and Evidence

Both parties explained that this tenancy began in July 2015 and ended in July 2016. Rent was \$2,500.00 per month, and a security deposit of \$1,125.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said that he was seeking a monetary award of \$1,125.00 because of damage that had occurred in the rental unit during the tenancy. Specifically, the landlord was seeking compensation for repairs related to broken blinds, tiling, a broken door and sprinklers in the lawn which were broken.

As part of his evidentiary package, the landlord supplied numerous invoices and photos related to the damage which is purported to have occurred during the tenancy. In addition, the landlord included a copy of the condition inspection report which was completed by the parties on June 30, 2017. It notes that the tenants acknowledged that a report was completed on this date, but did not agree with its contents.

The tenants disputed all aspects of the landlord's application. The tenant said that the blinds were marked as broken on the condition inspection report when the parties first entered into a tenancy and that an email was sent to the landlord in August 2015 highlighting problems with the blinds. A copy of this email, along with a copy of the landlord's email responding to the tenants' concerns was included as part of the tenants' evidentiary package. In her email of August 18, 2015 the landlord acknowledged that the blinds were broken, but deemed them "in overall excellent and functional condition." Additionally, the tenant said that the door in question, along with the tiles, was also broken when the tenants took possession of the rental. The tenant also argued that no replacement of the sprinklers were required, merely maintenance.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the landlord to prove entitlement to their claim for a monetary award.

During the hearing, evidence and testimony was presented by both parties concerning damage to the rental unit. The landlord applied for a monetary award related to a

broken door, tiles, blinds and sprinklers. Enclosed as part of the landlord's evidentiary packages were several invoices, along with a listing (marked as #4 in the landlord's package) of supplies and labour that were required in the rental unit.

I do not find that sufficient evidence was presented at the hearing by the landlord that the blinds were damaged beyond what was already present when the tenants took possession of the rental unit in July 2015. It was noted in the move-in inspection report that the blinds were "broken" and an August 2015 email from the tenants to the landlord highlighting their concerns with the blinds. In a follow up email, these concerns were acknowledged by the landlord but were dismissed as the blinds were deemed by the landlord to be "in excellent and functional condition." I find that the landlord was aware that the blinds were already damaged when the tenancy began, and was aware that a request to repair or replace them was sought by the tenants. I find that it would be inequitable to award damages to the landlord for blinds which were broken when the tenancy began and with which the tenants clearly had concerns and did not share the opinion that the blinds were in "excellent and functional condition." For these reasons, I dismiss this portion of the landlord's application.

The landlord has also applied for a monetary award related to tiles and a door which were broken during the tenancy. The parties offered differing descriptions of the problems related to these items, with the landlord arguing that they were damaged during the tenancy and the tenants saying these items were broken at the outset of the tenancy. A review of the condition inspection report performed between the parties at the outset of the tenancy does not make mention of any broken door, or tiles. I note that both doors and bathroom trim make up a portion of the condition inspection report, and I do not see any notes indicating that these items were broken when the tenancy began. In fact, the condition inspection report makes specific mention of other concerns regarding doors but does not state that one is broken. I find that the landlord has presented sufficient evidence that these items were broken during the tenancy and will award the amounts sought by the landlord as listed on page #4 of their application for dispute, in this case, \$200.00 for countertop tiles, and \$43.71 for a bathroom door frame.

The final aspect of the landlord's application concerns sprinklers that were broken in the backyard. The tenants denied breaking these items, and argued that the invoice presented as part of the landlord's evidentiary package does not show any sprinklers were actually replaced. A close reading of the invoice provided by the irrigation company notes, "replaced breaks and adjusted heads." I therefore find that sufficient evidence was presented by the landlord that damage to the sprinkler system occurred as a result of the tenants' actions. These actions may have been a result of negligence

as opposed to any action directed towards the sprinklers; however, it has been sufficiently shown that the landlord suffered a loss stemming directly from an action (or inaction) of the tenants. For these reasons, I allow the landlord to recover the entire amount of \$194.91 related to repairs for the sprinklers.

As the landlord was partially successful in his application he may recover the \$100.00 filing fee from the tenants.

In lieu of a monetary award, I allow the landlord pursuant to section 72 of the *Act* to retain \$538.62 from the tenants' security deposit. The landlord is directed to return the remaining security deposit in the amount of \$586.38 to the tenants.

Conclusion

The landlord is entitled to retain \$538.62 from the tenants' security deposit as follows.

Item	Amount
Repair of bathroom tiles	\$200.00
Repair of door	43.71
Sprinkler Repair	194.91
Return of Filing Fee	100.00
Total =	\$538.62

The landlord is ordered to return the remaining security deposit in the amount of \$586.38 to the tenants.

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: January 15, 2018

Residential Tenancy Branch