



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD

Introduction

This hearing dealt with the cross applications pursuant to the *Residential Tenancy Act* ("Act")

The landlord applied for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain 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 its application from the tenant, pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award equivalent to double the value of her security 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 recover the filing fee for this application from the landlord?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on May 1, 2016 and ended on June 30, 2016. The tenant was obligated to pay \$2400.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$1200.00 security deposit and a \$1200.00 pet deposit. The pet deposit has been returned. The landlord testified that the laminate flooring and carpet was brand new when the tenant moved in. The landlord testified that the tenant damaged the laminate floor causing the landlord to incur some costs. The landlord testified that the tenant also left some holes in the drywall the required patching and painting. The landlord testified that the unit was left dirty and required cleaning along with carpet cleaning. The landlord testified that written condition inspection reports were not conducted at move in or move out but a "walk through" was conducted. The landlord filed an application on July 7, 2017.

The landlord is applying for the following:

1.	Carpet Cleaning	\$80.00
2.	Holes in Drywall and painting	100.00
3.	Floor Repair	1500.00
4.	Suite Cleaning	120.00
5.	Filing Fee	100.00
6.		
	Total	\$1900.00

The tenant gave the following testimony. The tenant testified that she contacted the Branch and was told that she could apply for \$3600.00. The tenant testified that since the landlord did not conduct the condition inspection report she should be entitled to this amount.

Analysis

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 arguments are reproduced here. The principal aspects each party's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Firstly, I deal with the landlords claim for damages. The landlord submits that he seeks \$1800.00 in cleaning and damage. The landlord did not submit any receipts to support this amount. The landlord submitted several black and white photos; however the photos were of a poor quality. In addition, the landlord did not conduct written move in or move out condition reports. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

The tenant originally was seeking \$3600.00 for the return of her \$1200.00 security deposit. When questioned as to how she came to that amount the tenant testified that "I was told that by someone at the Branch". The tenant later amended her claim and lowered it during the hearing to \$2400.00. The tenancy ended on June 30, 2017. The landlord filed an application 7 days later on July 7, 2017.

The landlord acknowledged and conceded that he did not conduct written condition inspection reports as required by Section 24 of the Act but thought that he was justified in making a claim for damages. . The tenant submits that the landlord has breached Section 38 of the Act and should be entitled to the return of double her security deposit.

Section 38 reads as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished

under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable

The doubling provision is triggered only after the tenant has provided the landlord with their forwarding address in accordance with the Act. The doubling provision does not apply in this case as the tenant has not provided sufficient evidence that she served the landlord her

forwarding address in accordance with Section 88 of the Act, however the tenant is entitled to her deposit of \$1200.00.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord must return the security deposit to the tenant. I grant the tenant an order under section 67 for the balance due of \$1300.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords' application is dismissed without leave to reapply.

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 08, 2018

Residential Tenancy Branch