



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application under the *Residential Tenancy Act* (the *Act*) for:

- 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;
- a monetary award for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties were both in attendance I confirmed that there were no issues with service of the landlord's application for dispute resolution and evidentiary materials. The tenant confirmed receipt of the landlord's application package. The tenant said that he had not served any evidence. I find that the tenant was served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain all or a portion of the security deposit for this tenancy in satisfaction of their monetary claim?

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

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began in June, 2016 and ended on June 30, 2017. A security deposit of \$850.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. The parties participated in a move-in and move-out inspection and copies of the condition inspection reports were submitted into written evidence.

The move-out condition inspection report records that there were some damage to the cabinetry and the tile countertop. The report contains the handwritten statement: "Security deposit to be returned after inspection of leak in cabinet under sink & assessment by strata corp for penalty on missing visitor pass." The tenant has signed beneath the statement and he testified that he agreed to the landlord withholding an amount from the security deposit for those two items.

The landlord testified that the move-out inspection report was completed in a hurry and the full condition of the rental unit was unknown at the time. The landlord said that after the condition inspection report was completed she performed a more thorough inspection of the rental unit and found numerous other deficiencies.

The landlord submitted into written evidence three invoices from service providers for repairs done to the rental unit. The landlord claims the amount of \$1,171.61 for the following items:

Item	Amount
Electrical Services Including troubleshooting hood fan lights (loose connection in ballast and electrical wiring)	\$126.00
Oven Light Repair	\$709.61
Stop the leak under the kitchen sink; fixed bathroom fan and closet door; replaced two halogen light bulbs on oven; microwave was loose mount it properly	\$336.00
TOTAL	\$1,171.61

The landlord stated that she was not charged by the strata for replacement of a visitor pass. The landlord said that she believes the damage to the rental unit was caused by the tenant as the building and appliances are relatively new. The landlord said that she is unaware of the cost of repairing the cabinetry and tiling in the rental unit.

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. 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 as per section 38(4)(a).

In the present case the landlord filed their application to retain the security deposit on June 6, 2017, within the 15 days from June 30, 2017 granted under the *Act*.

The tenant testified that he gave the landlord permission to retain a portion of the security deposit for repairs to the kitchen sink leak and replacement visitor pass. He confirmed that he did not authorize the landlord to deduct any additional amount from the security deposit.

I accept the landlord's evidence that she was not charged for the replacement of a visitor pass and thus suffered no loss for that item. The landlord has submitted into written evidence an invoice for \$336.00 which includes the cost of stopping the kitchen sink leak. The invoice is not itemized showing the specific amount attributable to each task. As there are four tasks listed on the invoice I find it appropriate to grant a monetary award in the amount of \$84.00 a quarter of the invoice for the kitchen sink repairs. I find that the tenant has given written authorization that the landlord may retain \$84.00 of the security deposit.

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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is insufficient evidence to show that the damages to the rental unit the landlord claims are attributable to the tenant. The landlord's own submissions include email correspondence where the electrical issues are suggested to be a result of circuitry and grounding errors. I find that the landlord has not shown on a balance of probabilities that the issues with the rental unit originate with the tenant. I find that the

landlord has not shown how the cost for repairing damages including loose connections, electrical wiring and a shorted relay were a result of the tenant's actions. Consequently, I dismiss this portion of the landlord's claim.

As the landlord's claim was not fully successful the landlord is not entitled to recover the filing fee for this application from the tenant.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$766.00 in the following terms:

Item	Amount
Security Deposit	\$850.00
Withhold for Kitchen Leak Repair	-\$84.00
TOTAL	\$766.00

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.

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 3, 2018

Residential Tenancy Branch