



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF MNDC MNSD OLC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for compensation for loss or damage 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.

Tenant:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord acknowledged receipt of the tenant’s application. The tenant acknowledged receipt of the landlord’s application but argued it was not received at least 14 days before the hearing. The landlord’s application was sent to the tenant by registered mail on February 5, 2018 and not received by the tenant until February 6, 2018. The application was to be served to the tenant by February 5, 2018 to meet the

14 day requirement as per Rule 2.11 of the *Residential Tenancy Branch Rules of Procedure*.

The landlord's application is dismissed with leave to reapply as it was not served within the time requirements and the tenant did not have sufficient opportunity to submit evidence in response.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

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

Background and Evidence

The tenancy began in September 2015 and ended on June 30, 2017. The tenant paid a security deposit of \$875.00 at the start of the tenancy which the landlord continues to hold.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant testified that he was told everything was okay except for some scruff marks on the walls during the move-out inspection. The tenant submits he noted his disagreement with the scruff marks as noted in the move-out report. The tenant argues the scruff marks were pre-existing and this was communicated to the landlord at the beginning of the tenancy. The tenant submits he did not agree to any deductions from the security deposit. The tenant acknowledges signing box #2 on page 3 of the move-out condition report which authorizes a landlord to deduct monies from the security deposit. The tenant submits he was told he had to sign all parts of the report. The tenant submits the landlord wrote in the \$875.00 amount of agreed to deduction after he signed the report. The tenant testified this amount was recorded as \$0.00 when he signed it.

The landlord argues the tenant agreed to \$875.00 being deducted from the security deposit which is the full amount of the deposit. The landlord submits the tenant did record his disagreement with "scruff marks" but submits that there were more damages other than just scruff marks. The landlord submits there were dents in the walls etc and that the tenant agreed to the \$875.00 deduction as he agreed the actual damage would have exceeded this amount. The landlord submits the move-out condition inspection report contains various fair, scratched and poor codes as compared to the move-in

report. The landlord submitted an original copy of the move-out condition inspection and submits the report was filled out entirely during the inspection and it did not contain a \$0.00 amount when signed by the tenant.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Although I have dismissed the landlord's application as it was not filed on time, I did allow the landlord to enter the original move-out condition inspection report submitted with the landlord's application. The report is the same as submitted by the tenant except it is in the original ink; therefore, the tenant is aware of the contents of this document.

In reviewing the testimony and evidence submitted by the parties, I find the tenant did authorize, in writing, for the landlord to retain the full amount of the security deposit. I do not accept the tenant's testimony that the move-out condition inspection report was altered after he signed it. The original report submitted by the landlord does not appear to be altered in any way. Further, I find it very improbable that the tenant signed the report agreeing to a \$0.00 deduction. Just because the tenant noted his disagreement with "scruff marks" it does not mean there could not have been additional damages which he agreed to. I accept the landlord's testimony and find the tenant did agree to a deduction of \$875.00 at the time of signing the move-out condition inspection report.

I dismiss the tenant's claim for return of the security deposit, including double the amount, without leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

The tenant's 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: February 20, 2018

Residential Tenancy Branch