



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for money owed or compensation under the Act, to retain the security deposit in partial satisfaction of the claim and to recover the filing from the tenant.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on January 1, 2014. Rent in the amount of \$1,850.00 was payable on the first of each month. The tenant paid a security deposit of \$900.00. The tenancy ended on August 29, 2017.

The parties agreed that the tenant gave the landlord permission to retain the amount of \$150.00 from the security deposit and the amount of \$193.00 was returned to the tenant. The landlord has in trust the amount of \$557.00.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Repairs to the rental unit	\$456.75
b.	Filing fee	\$100.00
	Total claimed	\$556.75

The landlord testified that the rental unit was new when the tenancy commenced and the tenant asked the landlord if they could have some work done, such as add 3 sliding dimmer switches, mount clock, and artwork.

The landlord testified that the tenant also asked the landlord if they could install internet in an area, which there was no wires installed.

The landlord testified that the tenant refused to pay the invoice from the company that the tenant hired. The landlord stated that they had to pay the invoice because the company was going to put a lien on the property.

The tenant testified that they did not hire any company. The tenant stated that the co-landlord or the co-landlord's company did the work. The tenant stated that it makes no sense that the company would put a lien on the property because they own the property.

The tenant testified that this was a beautiful heritage home and since they were the first tenant to live in there were things that needed to be done. The tenant stated that they purchase all the items that they wanted to add, such as the dimmer switches, shelves, hooks for the closet and clothing rod and the landlord installed them. The tenant stated that these were all for improvements to the rental unit which were left behind.

The tenant testified that when they moved into the premises the internet wiring had only been roughed in. The tenant stated that they asked the landlord if it could be added to the area that they were going to be using as an office. The tenant would have likely cost about \$50.00, which they would have paid; however, the landlord wanted to have it installed.

The tenant testified that at no time did they hire any contracting company.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I find the landlord has failed to prove the tenant violated the Act, or that the tenant agreed to pay the landlord for installing items, that were purchased by the tenant.

Further, these items were left in the rental unit for the benefit of the landlord, which have not been removed. I find the landlord has failed to establish they have suffered a loss caused by the tenant.

Furthermore, I do not accept that the contracting company, owned by the co-landlord would place a lien on the property to which they own. This does not have the "ring of truth" as that would not be reasonable.

In light of the above, I dismiss the landlord's application without leave to reapply. The landlord is not entitled to recover the filing fee from the tenant.

Since the landlord has in their possession the remainder of the tenant's security deposit and as the landlord has no authority to retain the balance. I Order that the balance to be returned forthwith to the tenant.

Should the landlord fail to comply with my Order, I grant the tenant a monetary order for the balance due of the security deposit in the amount of **\$557.00**, pursuant to section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord's application is dismissed. The tenant is granted a monetary order for the balance due of their security deposit.

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: April 04, 2018

Residential Tenancy Branch