



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNSD, RPP, FFT
 MNDL-S, FFL

Introduction

This hearing dealt with a cross-Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking compensation from the Landlord for the cost of emergency repairs paid for and completed, a Monetary Order related to the return of personal property, the return of the security deposit, and recovery of the \$100.00 filing fee.

This hearing also dealt with a cross-Application filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for cleaning and disposal costs and damage to the rental unit, authorization to retain all or a portion of the Tenant’s pet damage deposit or security deposit, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The hearing was also attended by the witness for the Landlord but they were not called upon to provide testimony in the hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

The Tenant stated that he sent his evidence to the Landlord by regular mail on March 10, 2018, however, he did not provide me with any documentary evidence in support of this testimony and the Landlord denied having received any evidence from the Tenant. The Landlord stated that she sent her evidence to the Tenant by registered mail, however, the Tenant denied having received any evidence from the Landlord and the registered mail tracking number provided by the Landlord relates to a package sent internationally. Further to this, the Landlord testified that the registered mail was actually sent to the Tenant at the rental unit after he had already moved out.

The ability to know the case against you and to provide evidence in your defense is fundamental to the dispute resolution process. As a result, I find that it would be fundamentally unfair and a breach of both the principles of natural justice and the Rules of Procedure to accept either party's documentary evidence for consideration in the hearing as it has not been exchanged in accordance with the *Act* or the Rules of Procedure. As a result, the hearing proceeded based only on the testimony of the parties.

Despite the foregoing, both parties agreed to the acceptance of the tenancy agreement in the hearing as they each had copies well in advance of the hearing.

Preliminary Matter #2

Although a witness for the Landlord was present at the start of the hearing, the witness was excluded from the proceedings while the parties provided their evidence and testimony. The Landlord did not call their witness to provide any testimony, and as a result, no testimony was given by the witness or accepted for consideration in the hearing.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary or other Order regarding the return of personal property?

Is the Tenant entitled to a Monetary Order for the cost of emergency repairs completed?

Is the Tenant entitled to the return of all or a portion of the security deposit and the pet damage deposit?

Is the Landlord entitled to compensation and/or to retain all or a portion of the Tenant's security deposit and pet damage deposit for cleaning and disposal costs and damage to the rental unit?

Is either party entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the one-year fixed-term tenancy began on March 1, 2017, that rent in the amount of \$1,100.00 was due on the first day of each month, and that a security deposit in the amount of \$550.00 and a pet damage deposit in the amount of \$550.00 were paid, which the Landlord still holds. The parties agreed that prior to the start of this tenancy, the Tenant and another occupant resided in the rental unit under a different tenancy agreement and that the current tenancy ended on February 28, 2018. The parties were also in agreement that no condition inspections or reports were completed at the beginning or the end of the tenancy.

Although the Tenant sought \$1,900.00 for the return of personal property in his Application, in the hearing he testified that the Landlord has not retained any of his personal possessions. Instead, the Tenant provided unrelated testimony regarding multiple unwanted entries into his rental unit.

The Tenant sought \$800.00 for the cost of emergency repairs made for the purpose of unclogging a plugged toilet on multiple occasions throughout the tenancy. While the parties disagreed about the number of times these repairs were completed and whether or not permission was given by the Landlord for the Tenant to complete these repairs, ultimately the Tenant acknowledged that he did not obtain receipts for these repairs or provide receipts and a written account of the repairs to the Landlord when claiming for these amounts.

The Tenant also sought the return of his security deposit and pet damage deposit. Although the Tenant stated that he provided the Landlord with his phone number at the end of the tenancy, he acknowledged that he never provided the Landlord with his forwarding address in writing, or in any other manner.

The Landlord stated that the Tenant is not entitled to the return of his security deposit or pet damage deposit as he failed to provide his forwarding address in writing at the end of the tenancy. In any event, the Landlord stated that they are seeking to withhold all or a portion of the security deposit and pet damage deposit for damage to the rental unit as well as cleaning and disposal costs.

The parties provided contradictory evidence regarding the state of the rental unit at the end of the tenancy. The Tenant testified that the rental unit was reasonably clean and undamaged and that he hired a professional cleaning company at a personal cost of \$400.00 to clean the rental unit and dispose of several items. The Landlord testified that the rental unit was not reasonably clean and undamaged and sought \$283.50 in cleaning costs, \$792.44 for the cost of replacing a bed and bed frame, \$17.91 for the cost of air fresheners for pet odour, and \$150.00 for the removal and disposal of the mattress, bed frame, garbage and other items. Although the Landlord stated that the mattress and bed frame needed to be disposed of and replaced due to bug eggs, she acknowledged that a professional pest control company was not consulted prior to the disposal of these items.

The Landlord stated that the spray air fresheners were purchased due to pet odours in the home but the Tenant stated the unit was clean and therefore the air fresheners were not required. The Tenant also disputed the Landlord's claim for disposal costs as he stated he did not damage the bed or frame and no items were left behind as the company he hired removed and disposed of them.

The Tenant acknowledged that several light bulbs in the rental unit were burnt out at the end of the Tenancy and the Landlord sought \$41.95 for the cost of their replacement, which the Tenant did not dispute. The Tenant also acknowledged that at some point during either the first tenancy or the second tenancy, he or the previous occupant lost a key to the rental unit. The Landlord therefore sought \$225.00 to change the lock as she stated it is European and the key therefore could not be replaced by a local locksmith.

No documentary evidence was before me for consideration from either party regarding the costs sought or the condition of the rental unit.

Analysis

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim.

Although the Landlord sought \$1,510.80 for cleaning costs, air fresheners and light bulbs, lock replacement and the disposal and replacement of a mattress and bed frame, the parties agreed that no move-in or move-out condition inspections were completed. There is also no documentary evidence before me from the Landlord for consideration regarding these claims, the condition of the rental unit at the start and the end of the tenancy or the costs sought. As the Tenant agreed that several light bulbs were burnt out at the end of the tenancy and Policy Guideline #1 states that tenants are required to replace light bulbs in a rental unit throughout the tenancy, I find that the Landlord is entitled to the \$41.95 sought for replacement light bulbs.

As there is no documentary evidence of the condition of the rental unit at the start or end of the tenancy and the parties provided equally compelling testimony in the hearing regarding whether or not the rental unit was empty of the Tenant's possessions and reasonably clean and undamaged, I find that the Landlord has failed to establish, on a balance of probabilities, that the unit was not empty of the Tenant's possessions and reasonably clean and undamaged. As a result, I dismiss the Landlord's monetary claims for cleaning and disposal costs, the replacement of a bed and frame, and air fresheners without leave to reapply.

Although the Tenant agreed that he or the other occupant who resided in the rental unit with him under a previous tenancy agreement lost a key to the rental unit, the Landlord did not submit any documentary evidence in support of her testimony that it was not possible to cut a new key and therefore a new lock was required. Further to this, the Landlord acknowledged that she had at least one key for the rental unit. As a result, I am not satisfied that replacement of the lock was required or that the Tenant is responsible for this cost and I therefore dismiss the Landlord's claim for the replacement of the lock without leave to reapply.

Although the Tenant sought \$1,900.00 in relation to the return of personal property, he did not provide any evidence or testimony relating to the return of personal property or to establish that he is entitled to \$1,900.00 in relation to the return of personal property. As a result, the Tenant's claim in relation to the return of personal property is dismissed without leave to reapply.

The Tenant sought \$800.00 for the cost of emergency repairs completed and while both parties acknowledged that some repairs may have been completed by the Tenant with regards to the toilet, there was disagreement regarding what repairs were completed and whether permission was given by the Landlord for the Tenant to complete these repairs. Further to this, the Tenant acknowledged that he did not receive or provide the Landlord with receipts for these repairs alongside a written account of the repairs completed and a claim for the amount.

Section 33(5) of the *Act* states that a Landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. Based on the testimony provided by the parties, I find that the Tenant has not met the requirements set out under section 33(5) of the *Act* and his claim for the reimbursement of \$800.00 in emergency repairs is therefore dismissed without leave to reapply.

Although the Tenant also sought the return of his security deposit and pet damage deposit, the triggering event for the return of a security deposit is described in section 38(1) of the *Act* which states Except as provided in subsection (3) or (4) (a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit. As the Tenant acknowledged that he has not provided the Landlord with his forwarding address in writing, I find that his claim for the return of the security deposit is premature.

In any event, Policy Guideline # 17 states that when a landlord applies to retain all or part of the security deposit or the tenant applies for the return of the deposit, the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*. Policy Guideline #17 also states that where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. Based on the above, I find that the Tenant is therefore entitled to a Monetary Order in the amount of \$1,058.05 pursuant to section 67 of the *Act*, \$1,100.00 for the return of his security deposit and pet damage deposit, less the \$41.95 owed to the Landlord for the replacement of light bulbs.

As both parties were only partially successful, I decline to grant either party recovery of the filing fee.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,058.05. The Tenant is provided with this Order in the above terms and 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: May 29, 2018

Residential Tenancy Branch