



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROLINE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNS, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages to the unit
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

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 either party entitled to the security deposit?

Background and Evidence

The parties agreed that the tenancy began on February 1, 2015. Rent in the amount of \$1,674.00 was payable on the first of each month. The tenant paid a security deposit of \$787.50. The tenancy ended on August 31, 2017.

The parties agreed a move-in and move-out condition inspection report was completed. Filed in evidence is a copy of report.

Landlord's application

The landlord claims as follows:

a.	Carpet cleaning	\$115.00
b.	General cleaning	\$225.00
c.	Fireplace repair	\$285.17
d.	Filing fee	\$100.00
	Total claimed	\$625.17

The landlord's agent testified that the tenant did not clean the carpets, the rental unit was left dirty as the appliances, floors, windows, and kitchen cabinets all required to be cleaned. The landlord seeks to recover the carpet cleaning and general cleaning cost in the total amount of \$340.00.

The landlord's agent testified that the tenant agreed that these were costs that they were responsible to pay in the move-out condition inspection report.

The landlord's agent testified that the fireplace remote was also returned broken and had to be replaced. The agent stated that due to the age of the remote they also had to replace the receiver. The agent stated that the remote was approximately nine (9) years old at the time of replacement.

The tenant testified that they had the carpets cleaned. The tenant stated that they believe they left the rental unit cleaned. The tenant stated that they did agree that the move-out condition inspection report accurately reflected the condition of the rental unit; however, that was because they were under stress and they were starting to argue.

The tenant testified that it was the plastic piece where the batteries go in to the remote that broke. The tenant stated that the remote to the fireplace still worked.

Tenant's application

The tenant testified that they did not agree that the landlord could keep any amount from the security deposit. The tenant stated that they signed the form stated the landlord could keep the amount noted above from the security deposit; however, there was no amount listed. The tenant stated that they signed this spot in error and forgot to

cross it off. The tenant stated the landlord failed to return any portion of the security deposit within 15 days.

The landlord's agent testified that the tenant never provided them with their forwarding address in writing, as they were the one that wrote it down on the move-out condition inspection report when the tenant verbally gave it to them.

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, both parties have the burden of proof to prove their respective 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.

Section 21 of the Act States a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 37(2) of the Act states when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Landlord's application

The parties agreed in the move-out condition inspection report that the carpets were dirty and that the rental unit needed to be cleaned. Although the evidence of the tenant

was that they were under stress at the time, they could have written on the report that they disagreed with the report, which they did not. I find the tenant has not provided a preponderance of evidence to the contrary as required by section 37(2) of the Act. Therefore, I find the landlord is entitled to recover carpet cleaning and cleaning costs in the total amount of **\$340.00**.

I accept the remote control to the fireplace was broken, as the cover to the battery was off. However, I find this damage was more likely due from normal wear and tear under reasonable use and the aging process as the evidence supports the remote was nine (9) years old at the time of replacement. Therefore, I dismiss the landlord request to replace the remote and receiver.

I find that the landlord has established a total monetary claim of **\$440.00** comprised of the above described amount and the \$100.00 fee paid for this application.

Tenant's application

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

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.

...

(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.

The evidence of the landlord's agent was that they did not receive from the tenant their forwarding address in writing because the tenant did not write it on the move-out condition inspection report. However, I find the landlord's agent position unreasonable, as it was written by them, when it given by the tenant at the time the move-out condition inspection report was completed.

Simply because the tenant did not personally write their forwarding address on the form does not mean the forwarding address was not received in writing. I find the landlord had the tenant's forwarding address on August 18, 2017.

In this case, the tenant signed the report which they indicated the landlord could retain the deposit for the above amounts. However, there was no agreed upon amount listed to pay for carpet cleaning, cleaning or the remote.

Therefore, I find the landlord was required to claim against the security deposit within 15 days of receiving the tenants forwarding address. I find the landlord had until September 3, 2017, to make their application claiming against the deposit. The landlord's application was not filed until October 12, 2017, which was outside the statutory time limit.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as to an amount agreed upon by the tenant. Here the landlord did not have any authority under the Act to keep any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pays the tenant the sum of **\$1,675.00**, comprised of double the security deposit (\$787.50) on the original amount held and to recover the \$100.00 fee for filing this Application.

Since both parties have been successful with their application. I find it appropriate to offset their respective monetary claims. Therefore, the tenant's award of \$1,675.00 will be offset with the landlord's monetary claim of \$440.00, leaving a balance owed to the tenant of **\$1,235.00**. The tenant is granted a formal order for the balance due pursuant to section 67 of the Act.

Conclusion

Both parties were successful with their respective claims. Both claims were offset leaving a balance owed to the tenant. The tenant was granted a formal order for the balance due.

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 2, 2018

Residential Tenancy Branch