



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSD, MND

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed or compensation for loss, and for the return of the security deposit.

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.

Preliminary and Procedural matter

In this case, the tenant has written two different amounts for compensation. The tenant’s application and the detailed monetary worksheet are different. Therefore, I find the tenant is bound by the amount listed in the monetary worksheet.

Issues to be Decided

Is the tenant entitled to monetary compensation?
Is the tenant entitled to the return of the security deposit?

Background and Evidence

The parties agreed that the tenancy began on April 1, 2017. Rent in the amount of \$1,450.00 was payable on the first of each month. The tenant paid a security deposit of \$725.00. The tenant stated they vacated on September 14, 2017.

The tenant claims as follows:

a.	Return of security deposit	\$550.00
b.	Difference owing on utilities	\$112.18
	Total claimed	\$662.18

At the outset of the hearing the tenant agreed that the landlord's calculation for difference in utilities is reasonable. The tenant stated that the landlord has already paid the difference.

The parties agreed a move-in condition inspection report was completed. The tenant stated they did not participate in a move-out inspection because the landlord did not schedule one prior to moving out.

The landlord's agent submits that they did not know the tenant had vacated until September 18, 2018. The agent submits that the tenant was given an opportunity to participate in a move out condition inspection. The agent submits a Notice of Final Opportunity to Schedule a Condition Inspection was posted to the door and a copy sent by email to the tenant. File in evidence is a copy of the email thread.

The email from the landlord, reads,

"We were able to come by and confirm the move out took place be we would like to offer the chance for a proper inspection to be completed. We posted these today of the door."

[Reproduced as written]

The response from the tenant, reads in part,

"... if you wanted a walk through you should of brought it up before I moved out... I don't have time to constantly be running around for you or constantly on my phone dealing with your issues..."

[Reproduced as written]

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 tenant has the burden of proof to prove their claim.

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.

Condition inspection: end of tenancy

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

In this case, the landlord did not know the day the tenant vacated the rental unit. The landlord provided the tenant with a Notice of Final Opportunity to Schedule a Condition Inspection, by posting to the door and by email. The tenant responded to the landlord's agent's email, and I find it reasonable to conclude by the email that the tenant was not going to participate in the inspection. I find the tenant failed to attend and participate in the move-out condition inspection.

Consequences for tenant and landlord if report requirements not met

- 36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
 - (b) the tenant has not participated on either occasion.

In this case, the tenant was served with a final notice to participate in the move-out condition inspection. The tenant not provide an alternate date and the tenant did not attend on the date that was scheduled for the final inspection. The inspection was completed in their absence.

In this matter the landlord has returned a portion of the tenant's security deposit. I find the tenant extinguished their rights for the remainder of their security deposit as they

failed to attend the final opportunity to complete the move-out condition inspection. Therefore, I find the landlord is entitled to keep it.

The tenant's application is dismissed without leave to reapply.

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: May 08, 2018

Residential Tenancy Branch