



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EXCLUSIVE PROPERTY RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, MND, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for breach of the tenancy agreement pursuant to section 55;
- a monetary order for damage to the rental unit 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;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence. As such, I find that both parties have been properly served as per sections 88 and 89 of the *Act*.

Preliminary Issue(s)

At the outset, it was clarified with both parties that the tenancy had ended on July 1, 2017 and as such the landlord no longer required an order of possession. No further action is required for this portion of the landlord's application.

The hearing was adjourned due to a lack of time. On June 6, 2018 the hearing was reconvened with both parties present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security and pet damage deposits?
Is the tenant to a monetary order for return of double the security and pet damage deposits and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy originally began on April 1, 2013 and through subsequent signed tenancy agreements the tenancy continued. The last signed tenancy agreement began on July 1, 2017 on a fixed term tenancy ending on July 31, 2017 as per the submitted signed copy of the tenancy agreement dated June 20, 2017. The monthly rent was \$3,200.00 payable on the 1st day of each month. A security deposit of \$1,600.00 and a pet damage deposit of \$1,600.00 were paid.

The landlord seeks an amended monetary claim of \$6,289.75 which consists of:

\$2,163.04	Painting
\$2,940.00	Estimated Refinishing of Damaged Floors
\$126.00	Garbage Disposal Fee
\$588.18	Repair Ceiling/ Fix lamps
\$126.53	Replace missing fire screen and kit
\$175.00	Missing plants and broken armoire

The landlord claims that the tenant vacated the rental unit leaving it damaged beyond normal wear and tear; requiring repairs (refinishing) of the damaged flooring, ceiling(patching and painting), light fixture(replacement), furniture (replace damaged furniture) and replacement of missing plants and a fire screen/tools.

In support of these claims the landlord has provided copies of 42 photographs which the landlord claims are before and after photographs of the rental unit condition from the beginning of the tenancy. The landlord also relies upon a condition inspection report for the move-in and the move-out dated April 1, 2013 and August 4, 2017. Although a review of the combined report shows that the landlord and tenant failed to sign for the move-in portion of signatures for the report, the landlord has noted that the tenant had signed directly in section "Y" that she agrees that this report fairly represents the condition of the rental unit. The landlord claims that at the end of tenancy numerous scratches were noted on the hardwood flooring, the tenant had replaced the light fixture without written permission and that items (small planter plants, two large plants and a fire screen and tools) were missing and a broken armoire.

The tenant argued that her agent that completed the condition inspection report for the move-out but did not understand what she was signing and disputes the accuracy of the move-out report. The tenant disputed the landlord's monetary claims stating that the scratched floors were due to normal wear and tear and that there were many noted scratches on the flooring at the beginning of the tenancy. The tenant stated that this was noted on the condition inspection report for the move-in and in email communications with the landlord. The tenant also argues that the estimate provided by the landlord is fraudulent as shown in the email evidence of the tenant dated February 15, 2018. The tenant stated that the named author of the estimate was contacted and confirmed that the estimate was originally provided to the landlord on April 14, 2013 and not February 1, 2018 and that this was a general estimate in which a site visit was not performed. The tenant questions the authenticity of the estimate based upon the difference in dates. The landlord argued that this was originally obtained in 2013 and that the refinishing of the floors would be required to repair the scratches and in any event due to the passage of time, the actual cost would be higher now. The tenant also referred to an email to the landlord's agent dated April 22, 2015 in which discussions with the landlord were already taking place regarding refinishing the scratched hardwood floors, but that the landlord deemed it too expensive at the time. The tenant also argued that a wardrobe/armoire was left in the unit in which she did not want. The landlord was notified of this in an email dated May 2, 2013 to remove the wardrobe, but failed to do so. The tenant stated that the wardrobe was moved to the carport during her move-in. The tenant confirmed that she did replace the light fixture with the permission of the landlord and that the original lights were left in the attic. The landlord disputed this stating that no written permission was given and that at the end of tenancy there were no light fixtures in the attic. The tenant was unable to provide sufficient evidence of written permission or that the lights were left in the attic. The tenant argues that the small planter plants and the two artificial plants left by the landlord were house

warming gifts. The tenant was not notified that the “unfurnished” rental would require her to take care of the landlord’s plants over an approximate 4 year period.

During the hearing the tenant also argued that the photographs of the landlord are not as accurate as some of the photographs provided by the landlord. She asserts that the condition of the rental premises after the tenancy began are in fact from before the tenancy began. The landlord stated that he could not state with 100% accuracy that the submitted photographs were in fact for the end of tenancy condition.

The tenant seeks an amended monetary claim of \$10,439.18 which consists of:

\$39.18	Compensation, Replacing a Broken Showerhead
\$3,200.00	Return of Original Security/Pet Damage Deposits
\$1,600.00	Security Deposit
\$1,600.00	Pet Damage Deposit
\$7,200.00	Recovery of illegal rent increase, 10%

The tenant claims that she had replaced a broken shower head after notifying the landlord of the issue at her own expense in 2015. The tenant stated that there was no response to the request by the landlord. The landlord disputes this claim stating that at no time had the landlord been notified of a broken shower head and that without notification the landlord was not given an opportunity to resolve the issue. The tenant was unable to provide sufficient evidence of notification to the landlord on this issue.

The tenant seeks return of the combined \$3,200.00 security deposit (\$1,600.00) and the pet damage deposit (\$1,600.00). Both parties confirmed that the tenancy ended on July 1, 2017 and the landlord was provided with the tenant’s forwarding address in writing via email on August 4, 2017. A review of the landlord’s application notes that it was filed on August 28, 2017.

The tenant seeks compensation of \$7,200.00 for illegal rent increases that the landlord forced her into paying beginning in 2014 at approximately 10% on each occasion. The landlord disputes this claim. The tenant has referred to the provided emails dated March 211, 2013 re: “Application for ...” The tenant stated that she was forced to enter into multiple fixed term tenancies (2014-2017) with the landlord when she was promised a long term tenancy. The tenant explained that prior to the end of her agreed fixed term tenancy the landlord would provide a new fixed term tenancy with a new set monthly rent which would be equal to a 10% increase. Both parties agreed that on each

occasion the landlord offered a new fixed term tenancy and that the tenant had signed in agreement.

Although the tenant's amended monetary claim totals \$10,439.18 it is limited to the amount filed of \$6,400.00 as per requested total of the tenant's application.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the landlord's monetary claim, I find that the landlord is only partially successful in his application. The landlord has established a total claim of \$2,751.22 for:

\$2,163.04	Painting
\$588.18	Repair Ceiling/ Fix lamps

The tenant provided undisputed direct testimony confirming the landlord's claims that based upon the photographs, the tenants placed the "star" décor on the ceiling requiring removal and re-painting. The tenant also confirmed that the lamps were removed with the permission of landlord which was disputed. The tenant was unable to provide sufficient evidence of the notification of the removal or that the lamps were present in the attic at the end of tenancy.

The landlord has relied on a completed condition inspection report for the move-in dated April 1, 2015 which notes "p" poor condition on the living room floor and the move-out portion of the report dated August 4, 2017, which also notes "p" poor condition on the living room floor, dining room and two bedrooms with additional notations of "scratches". This provides limited evidence that additional damage was caused to the flooring, but the landlord relied upon an estimate obtained for refinishing the entire floor from April 2013 prior to the tenancy. On this basis, the landlord has failed to provide sufficient evidence for the claim of an actual amount for refinishing the damaged floors. However, I find that the landlord is entitled to an arbitrary monetary award as damage is evident

based upon the reports. As such, the landlord is granted an arbitrary monetary award for damaged flooring of \$500.00 taking into consideration the noted damage prior to the tenancy and the lack of up to date estimate or costs for the current damage. I also take into consideration that no evidence was provided concerning the age of the hardwood flooring. I dismiss the tenant's claim that the "scratches" or additional damage was due to normal wear and tear.

I also find that the landlord has failed to provide sufficient evidence to establish a claim for the following:

\$126.00	Garbage Disposal Fee
\$126.53	Replace missing fire screen and kit
\$175.00	Missing plants and broken armoire

The above noted items of claim are dismissed for lack of sufficient evidence as they rely substantially on the submitted photographs which were disputed during the hearing. Several photographs provided by both the landlord and the tenant were conflicting and contradictory. I also note that the landlord was unable to satisfy me that the "before" and "after" photographs of the items in questions were not present at the end of tenancy. In this regard, the landlord has failed to provide sufficient evidence in his burden of proof

I find that the tenant's claims for \$7,239.18 are dismissed which consists of:

\$39.18	Compensation, Replacing a Broken Showerhead
\$7,200.00	Recovery of illegal rent increase, 10%

On the first item of \$39.18 the tenant claims that verbal notice was provided to the landlord to fix/replace the broken shower head. This was disputed by the landlord that no notification or permission was given to the tenant. The landlord argued that the tenant failed to give the landlord an opportunity to resolve the issue. The tenant provided insufficient evidence that the landlord was notified of the broken shower issue. As such, this portion of the tenant's claim is dismissed.

On the second item noted of \$7,200.00 in recovery of illegal rent increase which the tenant states totals approximately 10% of rent overpaid, I find that the tenant has failed to establish. Although the tenant argues that rents were illegally increased at a rate of 10%, both parties agreed that a yearly fixed term tenancy began the tenancy and that a subsequent yearly tenancy was offered and accepted by the tenant. I find that this does

not constitute an illegal rent increase and was instead a negotiated rental agreement. As such, this portion of the tenant's application is dismissed.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

\$3,200.00	Return of Original Security/Pet Damage Deposits
\$1,600.00	Security Deposit
\$1,600.00	Pet Damage Deposit

In this case, I find that the tenancy ended on July 1, 2017 and that the landlord was notified of the tenant's forwarding address in writing on August 4, 2017. Based upon the landlord's application for dispute filed on August 28, 2017, the landlord has failed to apply for or return the combined \$3,200.00 deposits within the allowed timeframe of 15 days. Based upon this the last date available for the landlord to apply for dispute would have been on August 19, 2017 making the application filed 9 days later. As such, I find that the tenant has established a claim for return of the \$3,200.00 security and pet damage deposits. I note that although the tenant did not apply for compensation under section 38(6) the tenant did not waive her right and as such is entitled.

I find pursuant to section 38(6) that the landlord failed to comply with the Act by returning the combined deposits or filing an application for dispute within the allowed 15 day time frame and is liable for an amount equal to the held \$3,200.00 security and pet damage deposits.

The landlord has established a total monetary claim of \$3,251.22. I also find that the landlord having been successful is also entitled to recovery of the \$100.00 filing fee. The tenant has established a total monetary claim of \$6,400.00. The tenant having been substantially successful is also entitled to recovery of the \$100.00 filing fee. In offsetting these claims, I find that the tenant is entitled to a total monetary claim of \$3,148.22.

Conclusion

The tenant is granted a monetary order for \$3,148.22.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: June 13, 2018

Residential Tenancy Branch