



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-SD, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlords requesting a monetary order to reimbursement for the items taken by the Tenant that belong to the Landlords, and to retain part of the security deposit in satisfaction of the order. The Landlords also request an order for payment of the filing fee.

The Landlords appeared for the scheduled hearing. The Tenant was present and assisted by his son, DL. I find that the notice of hearing was properly served and that evidence was submitted by all parties. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Issue(s) to be Decided

Are the Landlords entitled to a monetary order for payment of missing items following the end of the tenancy, pursuant to section 67 of the Residential Tenancy Act (“Act”)?

If so, are the Landlords entitled to retain part of the security deposit in satisfaction of the monetary order, pursuant to section 38 of the Act?

Are the Landlords entitled to reimbursement of their \$100.00 filing fee, pursuant to section 72 of the Act?

Background and Evidence

The tenancy began November 1, 2015 as a fixed term tenancy, which reverted to a month-to-month tenancy for \$1,700.00 per month; a security deposit of \$850.00 was paid to the Landlords. The tenancy ended on November 30, 2017 and a move-in/move-out inspection report was filed into evidence. Both parties signed the standard move-in inspection report, which did not contain a list of chattels on the property, but only contained information concerning the general condition of the rental premises. At the move-out inspection, the Landlord noted several missing items, namely a missing patio table, 6 chairs, 12 cedar fence boards and an 8 foot stepladder. The Tenant indicated that he did not agree with the report, and stated on the report, *"no list of "missing" items on original report"*.

The Landlord argued that the Tenant did not deny these items were missing, only that they were not indicated on the move-in inspection report. The Tenant disputes this, stating that it was never acknowledged that these items were on the property. Later, the Tenant's son makes the suggestion that since the Landlord came and went from the property to do maintenance, that the Landlord may have moved or taken the items. The Landlord admits taking a second extension ladder, a lawn mower and a weed-eater, none of which are claimed in this Application.

The Landlord provided older photographs taken either before or during the tenancy showing the items in the yard at the premises; she recalls seeing the Tenant's son sitting in one of the folding chairs while she was doing work in the yard, but DL denies recalling this event. He argues that his father is 86 and would have no need to take these things from the yard upon moving out, and that he had his own yard furniture which was moved out on November 23 and November 27th, 2017. He states that the steam-cleaner was at the house on the 28th and that when the move-out inspection was done on November 30th, they arrived at the house to find the door open and lights on. He suggests that someone was at the house and perhaps took the items now being claimed.

The Landlords submitted online samples of advertisements for the missing items which appear to be similar in quality to the items missing. The following table lists the items claimed to be missing after the tenancy, the advertised cost of a replacement and the amount claimed by the Landlords in light of the "used" condition of some of their items:

Item	Replacement Cost (pre tax)	Amount Claimed
Patio Table	\$89.99	\$90.00
Fence Boards	\$36.00	\$36.00
Six Patio Chairs	\$210.00	\$180.00
Two Folding Chairs	\$338.00	\$100.00
Ladder	\$158.00	\$158.00
TOTAL	\$831 plus tax	\$564.00

The Landlords argue that they are owed \$564.00 for the replacement of these missing items; the Landlords filed this Application on December 11, 2017 to request an order. They delivered the Notice of Hearing, evidence and a cheque for the balance of the security deposit in the amount of \$268.00 to the Tenant, which they note has not been cashed by the Tenant. The Tenant's son argues that the application was brought as retribution for the Tenant having won an earlier application before the Residential Tenancy Branch, heard last year. That application was an unrelated matter and of no consequence to the merits of this Application.

Analysis

An arbitrator may award damages as permitted under the Act or at common law. The authority to claim damages for missing items following a tenancy arises from section 67 of the Act, which reads:

67 Without limiting the general authority in section 62 (3), if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

An arbitrator may award a sum for out of pocket expenditures or for the value of a general loss if proven at a hearing. If a claim is made by a landlord for damages, the normal measure is the market value of the lost or missing articles (i.e. the price of a similar item in the market). The condition and/or age of the item should then be taken into account.

I find that the Landlords have shown on a balance of probabilities that the items claimed were available for use during the tenancy. The older photographs confirm the existence of these items and the Tenant's son's suggestion that the Landlord or another party may have removed items between November 27th and November 30th acknowledge that these items existed.

The tenancy was still in effect until November 30th and the Tenant liable for the items until that time. Therefore, even if I accept the suggestion that a third party took the items sometime between November 28th and 30th, the Tenant was still considered liable for any loss or damage to the property to the end of the month, unless proven otherwise.

I do not accept the argument that the Landlord went to the property and took these particular items, and then went through the trouble of launching an Application, pricing out each item and then claiming only a portion of the security deposit as compensation.

The argument that the Tenant is elderly and has no use for the items does not automatically suggest to me that the Tenant is not liable when those items disappear during the tenancy. The fact that these specific items were not listed individually on the Condition Inspection Report upon moving in does not suggest they were not part of the rent; the standard report merely documents and "*records the condition of the rental unit at the time of move-in and at the time of move-out by the tenant*". The report lists the rooms generally found within a rental premise, as well as appliances and fixtures, leaving space to comment on the condition of each.

The Landlords had the burden of proving their claim on a balance of probabilities. I find that the Landlords' evidence is reliable and that they are entitled to damages for the missing items, for the reasons set out above. I have reviewed the evidence and the amounts claimed and I am prepared to award the Landlords the sum of \$564.00; as the Landlords were successful in their claim, I am awarding the filing fee of \$100.00.

The Landlords have asked to retain part of the security deposit of \$850.00 in satisfaction of the monetary award. Section 38 of the Act sets out the requirements in addressing the security deposit paid by a tenant:

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.

The Landlord testified that she provided a cheque for return of a portion of the security deposit and that an Application was filed on December 11, 2017, within the 15 day deadline. I find that the Landlords may use the security deposit to off-set the total monetary award of \$664.00; the Landlords are obliged to return the balance of \$186.00 to the Tenant forthwith, and an Order will be issued with the Tenant's decision that may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment.

The Tenant shall destroy the cheque previously provided by the Landlords so that the corrected amount can be paid out. No interest is payable over the period of the tenancy on the security deposit.

Conclusion

The Landlords will retain \$664.00 of the security deposit and shall pay the balance of the security deposit in the sum of \$186.00 to the Tenant, forthwith.

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 07, 2018

Residential Tenancy Branch