



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND MNSD FF / Tenant: MNDC MNSD FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for compensation for damage 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 the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of respective applications and evidence packages.

Issues

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to retain all or a portion of the security deposit?

Is the landlord entitled to recover the filing fee for this application?

Is the tenant entitled to monetary compensation for loss?

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on February 1, 2017 and was originally for a one year fixed term ending on February 1, 2018. In an e-mail dated August 31, 2017, the landlord advised the tenants that their lease would not be renewed at the end of the one year fixed term and that they were free to end their lease even sooner upon providing one month's notice. The tenants took the landlord up on the offer and on September 27, 2017 provided notice to vacate effective October 31, 2017. The tenancy ended on this date. The tenants paid a security deposit of \$800.00 at the start of the tenancy which the landlord continues to hold.

Landlord's application:

The landlord is claiming restoration expenses incurred as a result of a flood that occurred in the bathroom of the rental unit on May 11, 2017. The flood was caused by an overflowing toilet. The tenants were not home when the flood occurred. The flood was discovered after the unit below reported a leak. The landlord testified that her husband cleared the plug. The landlord testified that she does not know what caused the toilet to become plugged but her husband did see q-tips on the floor near the toilet area.

The landlord is claiming an outstanding electricity bill in the amount of \$24.58. The tenant did not dispute this and agreed to this part of the landlord's claim.

The landlord is claiming \$50.00 for repairing a garbage disposal. The landlord testified that the garbage disposal was not working at the end of the tenancy. The landlord submitted a video and pictures in support. The landlord testified that they found a plastic Kinder egg toy in the garbage disposal which likely caused it to stop working. The landlord also submitted an invoice.

The landlord is claiming \$116.00 for the freezer not working. The landlord testified that they found the freezer not working at the end of the tenancy.

The landlord is claiming \$5.00 to replace a cracked electric outlet. A picture was provided.

The landlord is claiming \$50.00 for repairing a booster fan. The landlord described this as a fan above the dryer vent. The landlord testified that the fan was not cleaned and unplugged.

The tenant testified that they did not intentionally cause the toilet to overflow. He testified that they were not aware of any issues or leaks from the toilet.

The tenant testified that the garburator was fine upon move-out inspection and that there was an issue with the garburator back in May 2017.

The tenant testified that there was no issue with the freezer upon move-out.

The tenant testified that there was no issue identified with the booster fan in the move-out inspection.

The tenant testified that he does not know anything about the cracked electric outlet. The tenant submits that the pictures submitted by the landlord were taken after the move-out inspection.

The landlord clarified that the garburator was previously repaired but it again needed repairs after move-out and this was noted in the move-out inspection.

Tenants' application:

The tenants are claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing.

The tenants are also claiming compensation for the landlord illegally telling them their lease would not be renewed and causing them to pay rent for two apartments in October 2017.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an

Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

The landlord is awarded **\$24.58** as agreed to by the tenant for an outstanding electricity bill.

The landlord's claim for restoration expenses caused by the flood is dismissed. The landlord has provided insufficient evidence that the toilet overflow was caused by the deliberate or negligent actions of the tenants. The landlord has provided insufficient evidence that the overflow was the result of a blockage caused by the tenants or that there was a leak which the tenants failed to report.

I accept the landlord's testimony and supporting evidence that the garburator was not functioning at the end of the tenancy. I accept the landlord's testimony that it was likely caused by a plastic toy found in the drain as a result of the tenants' negligence. This was noted in the move-out condition inspection and the landlord submitted picture and video evidence in support. I award the landlord **\$50.00**.

The landlord's claim for cost of the freezer and booster fan repair is dismissed. The landlord provided insufficient evidence that these repairs were required due to the actions or negligence of the tenants. As per *Residential Tenancy Policy Guideline #1 Landlord and Tenant – Responsibility for Residential Premises*, the landlord is generally responsible for repairs to appliances unless the damage was caused by the deliberate actions or neglect of the tenants. The landlord is also responsible to clean out the dryer exhaust pipe and vent at regular intervals.

The landlord is awarded **\$5.00** for repairing the cracked electric outlet. I accept the picture evidence submitted by the landlord and find this damage was done by the tenants.

The landlord is entitled to a **total award of \$79.58**.

The tenants' application for compensation for loss for moving and having to pay rent at two apartments is dismissed. The tenants were merely advised that their lease would not be renewed at the end of the fixed term and provided the option to end the lease sooner. The tenants exercised that option and vacated on their own accord.

The tenants' application for return of double the security deposit is dismissed as the landlord filed an application to retain the deposit with 15 days of being provided a forwarding address.

As both parties were only marginally successful in their respective applications, I find that neither party is entitled to recover the respective filing fees paid for these applications.

The landlord continues to hold a security deposit in the amount of \$800.00. The landlord is permitted to retain \$79.58 from this security deposit in full satisfaction of the monetary award and the balance of \$720.42 is to be returned to the tenants forthwith.

The tenants are granted a Monetary Order in the amount of \$720.42.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$720.42. 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: June 21, 2018

Residential Tenancy Branch