



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX COMMERCIAL SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL
 MNSD, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on May 15, 2018. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee. The Tenant’s Application for Dispute Resolution was made on May 30, 2018. The Tenant applied for the return of their security deposit and the return of their filing fee.

Both the Tenant and the Agent for the Landlord (the Agent) attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Agent were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to the return of her security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

Both parties testified that the tenancy began on January 1, 2017, as a one-year fixed term tenancy that rolled into a month to month after the first year. Rent in the amount of \$1,300.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$650.00 security deposit. The Tenant provided a copy of the tenancy agreement into documentary evidence.

Both parties also testified that the Tenant issued a notice to end her tenancy on March 25, 2018, and moved out of the rental unit on April 29, 2018. Both parties agreed that the move out inspection was conducted on April 29, 2018, and that the Tenant provided her forwarding address to the Landlord by writing it on the move out inspection report.

Both parties testified that there had been amendments made to the move-out inspection document after the inspection had been completed on April 29, 2018. The Agent testified that the amendments were added after the owners conducting an additional inspection of the unit. The Tenant testified that she was not present for this additional inspection, conducted after she moved out. The Agent testified that the owners noted the following additional deficiencies, which he had missed during his inspection with the Tenant:

- A stain in the cement under the front door mat
- Scratches on the fridge
- Discoloration on a baseboard heater
- Burnt stove top
- Additional general cleaning

The Agent testified that the Landlord is seeking compensation of \$483.66; \$125.00 in labour for cleaning ink out of the clothes dryer, \$50.00 in labour for cleaning a burnt stove top, \$75.00 in labour for additional general cleaning done by the Landlord, \$37.50 in labour for cleaning a stain on the cement under the front door mat, \$96.16 in cleaning supplies, and \$100.00 in compensation for the scratches to the fridge. The Agent could not account for the discrepancy between what the Landlord had applied for in the original application and what is documented in the Landlord monetary work sheet. The Agent requested to reduce the claim from \$550.00 to \$483.66, as per the worksheet provided from the Landlord provided into documentary evidence.

The Tenant testified that the only deficiency, she was aware of during the move-out inspection was the ink in the dryer, the Tenant testified that she agrees with paying the \$125.00 the Landlord is requesting for cleaning the dryer. Both Parties testified that the additional charges including the professional cleaning were not indicated as being needed when the move-out inspection was completed but were added by the Landlord several days after the end of the tenancy. The Tenant testified that it was her understanding that the rental unit had passed the move-out inspection and that she would be getting her security deposit back.

The Tenant testified that she received an email from the Agent on May 4, 2018, advising her that the Landlord was going to keep her security deposit due to additional cleaning that was needed and damages to the rental unit. The Tenant testified that she did not agree to this change, and expects that her security deposit be returned, less the cost for cleaning the dryer.

The Agent testified that he had paid \$100.00 to have professional cleaners come into the rental unit and clear after the Landlord had advised him that the Tenant had not cleaned the rental unit to their standards. The Agent testified that the \$75.00 the Landlord is looking for in this claim is for additional cleaning the Landlord wanted after the professional cleaners had finished.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord's Claim

Section 37(2) of the *Act* states:

Leaving the rental unit at the end of a tenancy

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
 - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept the testimony of both parties that they conducted the move-out inspection on April 29, 2018, and that the only deficiency noted at that time were ink stains in the dryer, which the Tenant has agreed to repay the Landlord, \$125.00 in labour costs to have the dryer cleaned.

I also accept the testimony of both parties that the Landlord amended the move-out inspection after the inspection took place, between the Tenant and the Landlord's Agent on April 29, 2018. The move-in/move-out inspection is an official document that represents the condition of the rental unit at the beginning and the end of a tenancy, it is required that this document be completed in the presence of both parties.

The act of amending this document in the absence of the other party decreases the evidentiary reliability this document may have had in these proceedings. In the absence of a valid move-out inspection, I must rely on the verbal testimony and additional documentary evidence provided by both parties in order to determine the validity of the Landlord's claim.

I accept the testimony of the Agent and the Tenant that they had not included the additional deficiencies listed by the Landlord in this claim, as they had not seen or noted them as deficiencies at the time of the inspection. The Agent testified in the hearing that he had not seen the scratches on the fridge, noticed the discoloration on the baseboard heater, seen a stain on the cement, nor had he found the rental unit dirty at the time of inspection. I accept the Agent and the Tenant's testimony as the official condition of the rental unit at the end of this tenancy.

When a Landlord assigns an agent to act on their behalf during any part of the tenancy, including the move-out inspection, the Landlord is bound by the agreements and decisions made by that Agent on their behalf. There is no legal ability to insist on amendments, changes or make additions to those agreements, made by their assigned agent, after the fact.

I find the Tenant and Landlord's Agent conducted a legally binding move-out inspection on April 29, 2018. I find that the rental unit was returned to the Landlord on April 29, 2018, in satisfactory condition, less the agreed cost of cleaning ink out of the dryer.

I caution the Landlord; the *Act* requires a Tenant to return the rental unit to the Landlord in a reasonable state of cleanliness. In this case, the Landlord could be seen as applying what might be termed as a "white glove" test to determine the cleanliness of the unit, which would be more than just a reasonable standard of cleanliness that can be required of a tenant under the *Act*.

I allow the Landlord an award of \$125.00, to recover the costs of cleaning ink out of the dryer in the rental unit.

The Tenant's Claim

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

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.

I find that this tenancy ended on April 29, 2018, the day the Tenant and the Agent conducted the move out inspection, and the Tenant returned the keys to the rental unit to the Agent. I also find that the Tenant provided her forwarding address to the Landlord on April 29, 2018, as required by section 38 of the *Act*. Accordingly, the Landlord had until May 14, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit.

I find that the Landlord submitted the Application for Dispute resolution to claim against the deposit on May 15, 2018. I find that the Landlord breached section 38(1) of the *Act* by not returning the Tenant's security deposit or filing a claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven her entitled to the return of double her security deposit.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in her application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for her application.

I order the Landlord to return double the security deposit, repay the costs of the Tenant's application for this hearing, less the \$125.00 they have been awarded for cleaning the dryer.

Security Deposit	\$650.00
Security Deposit Doubled	\$650.00
Recovery of the filing fee	\$100.00
	\$1,400.00
Dryer cleaning (ink)	-\$125.00

Owing

\$1,275.00

Conclusion

I grant the Tenant a Monetary Order in the amount of \$1,275.00. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. 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: July 19, 2018

Residential Tenancy Branch