



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MND, MNR, MNSD, MNDC, FF, O
Tenant's application: MNSD, FF

Introduction

This hearing was convened as a result of the Applications for Dispute Resolution ("applications") from both parties seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order for damage to the unit, site or property, for authorization to keep all or part of the tenant's security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for unpaid rent and/or utilities, to recover the cost of the filing fee and other unspecified relief. The tenant applied for the return of their security deposit and pet damage deposit, and to recover the cost of the filing fee.

On April 5, 2018 the hearing commenced with an agent for the landlord ("agent"), the son of the agent, the tenant, and an agent for the tenant ("tenant agent") in attendance at the teleconference hearing. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and documentary evidence is provided below and includes only that which is relevant to the hearing. After 73 minutes, the hearing was adjourned to allow additional time for the parties to present their evidence and for their testimony to be heard. An Interim Decision dated April 6, 2018 was issued which should be read in conjunction with this decision as several preliminary matters were addressed. On June 12, 2018 the hearing reconvened and after an additional 48 minutes of testimony the hearing was concluded.

Preliminary and Procedural Matter

At the outset of the hearing, the landlord's documentary and digital evidence were excluded in full as it was served late and not in accordance with the Rules of Procedure. In addition, I have considered that the testimony of the tenant and the tenant agent that confirmed that neither provided the landlord permission to submit the landlord's evidence late. Therefore, I have only considered the tenant's documentary and digital evidence which the landlord confirmed having received and reviewed prior to the hearing.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit and pet damage deposit under the *Act*?
- Is either party entitled to the recovery of the cost of the filing fee?

Background and Evidence

The parties agreed that the tenancy began on September 3, 2016. The parties disputed the date the tenant vacated the rental unit. The tenant stated it was September 2, 2017 and the landlord stated it was September 3, 2017, which is one day later. There is no dispute that the tenant paid a security deposit of \$1,950.00 and a pet damage deposit of \$1,950.00 at the start of the tenancy.

Landlord's Claim

The landlord has claimed for \$7,860.00 and attempted to increase that amount to \$21,413.73 which was not permitted during the hearing as the landlord failed to amend their application in accordance with the Rules of Procedure. As a result, the landlord's monetary claim is limited to the original amount served on the tenant which indicated \$7,860.00 which is comprised as follows:

ITEM DESCRIPTION	AMOUNT
1. Loss of one month's rent	\$3,900.00
2. Professional carpet cleaning	\$300.00
3. Wool carpet replacement	\$2,000.00
4. Damaged massage chair	\$900.00

5. Move-out fee	\$200.00
6. Cable and internet bills not paid	\$560.00
TOTAL	\$7,860.00

Regarding item 1, the landlord has claimed \$3,900.00 for loss of one month's rent due to the tenant's not giving written notice to end the tenancy. The parties agreed that the first tenancy began on September 3, 2016 and was a short fixed-term for one month ending October 2, 2016. The parties also agreed that a second fixed-term agreement was signed effective October 3, 2016 and required vacant possession as of September 2, 2017. Based on the above, this item was dismissed without leave to reapply during the hearing due to insufficient evidence as I find the tenancy agreement was a fixed-term tenancy as indicated by the parties during the hearing and that the tenant was not required to provide notice to end the tenancy as the tenancy agreement required the tenant to vacate at the end of the fixed term as agreed by the parties during the hearing.

Regarding item 2, the landlord has claimed \$300.00 for professional carpet cleaning. The agent for the landlord confirmed that a receipt was not submitted in evidence and that only a quote was obtained to support the value of \$300.00. This item was dismissed during the hearing without leave to reapply due to insufficient evidence as the landlord failed to provide supporting photographic evidence and the tenant did not agree to this cost during the hearing. In addition, the landlord failed to submit a condition inspection report ("CIR") for my consideration.

Regarding item 3, the landlord has claimed \$2,000.00 for the cost to replace a wool carpet that the landlord claims was damaged by the tenant's dog during the tenancy. The landlord did not include a CIR or photos for my consideration and the tenant claims the tenant cleaned the carpets monthly as the tenant had a weekly cleaner and was in the habit of cleaning carpets monthly. Both parties confirmed that the wool carpets did not have cleaning instructions provided at the start of the tenancy. The agent stated that the fact that tenant admits to cleaning the carpets monthly confirms they must have been dirty. The landlord did not provide any supporting documents to support the value of \$2,000.00 being claimed for this item.

Regarding item 4, this portion is dismissed in full without leave to reapply as the landlord failed to provide any details in support of this item during the hearing in relation to an alleged damaged massage chair.

Regarding item 5, the landlord has claimed \$200.00 for the move-out fee which the tenant confirmed was not paid at the time they moved out. Based on the wording of #5

of the tenancy agreement which indicates that the tenant will pay the move-out fee this portion of the landlord's claim was indicated as successful during the hearing and that the landlord met the burden of proof as the tenant confirmed they did not pay this at the time they moved out of the rental unit.

Regarding item 6, the landlord failed to present any evidence related to unpaid cable and internet bills and as a result, this portion is dismissed in full without leave to reapply due to insufficient evidence. Instead, the agent alleged that the landlord suffered a loss of September 2017 rent and later changed their testimony that it was actually May and June 2017 rent that was being claimed. The parties were advised that the agent's testimony regarding unpaid rent was being afforded no weight due to contradictory testimony of which month they were claiming for and that between the start of the hearing on April 5, 2018 and the reconvened date of June 12, 2018 the agent could not determine what month they were claiming for and as a result, I find the landlord has not met the burden of proof.

Tenant's Claim

The tenant has claimed for the return of her security deposit of \$1,950.00 and pet damage deposit of \$1,950.00 and fob deposit of \$200.00, before the filing fee is applied. There is no dispute that the landlord continues to hold the tenant's fob deposit of \$200.00 yet confirmed that the fob was returned by the tenant and as a result, I find the tenant is entitled to the return of the **\$200.00** fob deposit.

Regarding the security deposit and pet damage deposit which when combined total \$3,900.00 ("combined deposits") there is no dispute that the landlord continues to hold both deposits and that the landlord failed their application on September 9, 2017 which is within 15 days of the end of tenancy date. I will therefore deal with the combined deposits below.

Analysis

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the applicant for each application before me (“applicant”) to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord’s Claim

Item 1 – As indicated above, this \$3,900.00 portion of the landlord’s claim for loss of one month’s rent due to the tenant’s not giving written notice to end the tenancy was dismissed due to insufficient evidence, without leave to reapply. I find that the landlord has failed to meet part one and two of the test for damages or loss as the tenancy was a fixed term tenancy and did not require the tenant to give written notice to end the tenancy as a result. Therefore, I find there was no merit to this portion of the landlord’s claim.

Item 2 - The landlord has claimed \$300.00 for professional carpet cleaning. The agent for the landlord confirmed that a receipt was not submitted in evidence and that only a quote was obtained to support the value of \$300.00. As indicated above, this item was dismissed during the hearing without leave to reapply due to insufficient evidence as the landlord failed to provide supporting photographic evidence and the tenant did not agree to this cost during the hearing. As the landlord failed to submit a condition inspection report (“CIR”) for my consideration and without any photographic evidence I find the landlord has failed to meet the burden of proof for this portion of their claim.

Item 3 - The landlord has claimed \$2,000.00 for the cost to replace a wool carpet that the landlord claims was damaged by the tenant's dog during the tenancy. Due to the landlord failing to include a CIR or photographic evidence for my consideration and given that the tenant denies the claim against them, I find the landlord has failed to provide sufficient evidence to meet the burden of proof. I accept that the tenant cleaned the carpets monthly as the tenant had a weekly cleaner and was in the habit of cleaning carpets monthly. I note that both parties confirmed that the wool carpets did not have cleaning instructions provided at the start of the tenancy.

Although the agent stated that by the tenant admitting to cleaning the carpets monthly confirms they must have been dirty, I find does not support that the carpets were dirty at the end of the tenancy and that the onus of proof lies on the landlord and not the tenant to prove this portion of the landlord's claim. The landlord did not provide any supporting documents to support the value of \$2,000.00 being claimed for this item. Therefore, this portion of the landlord's claim is dismissed without leave to reapply, due to insufficient evidence.

Item 4 - This portion is dismissed in full without leave to reapply as the landlord failed to provide any details in support of this item during the hearing in relation to an alleged damaged massage chair.

Item 5 - The landlord has claimed \$200.00 for the move-out fee which the tenant confirmed was not paid at the time they moved out. Based on the wording of #5 of the tenancy agreement which indicates that the tenant will pay the move-out fee I find the landlord has met the burden of proof. Therefore I grant the landlord **\$200.00** for this portion of their claim.

Item 6 - The landlord failed to present any evidence related to unpaid cable and internet bills and as a result, this portion is dismissed in full without leave to reapply due to insufficient evidence. As noted above, the agent alleged that the landlord suffered a loss of September 2017 rent and later changed their testimony that it was actually May and June 2017 rent that was being claimed. I dismiss this portion of the landlord's claim as I find the agent's testimony to be contradictory and afford the agent's testimony no weight for this portion of the landlord's claim and find that the landlord has failed to meet the burden of proof.

As the landlord's application had merit, I grant the landlord the recovery of filing fee in the amount of **\$100.00**.

The landlord continues to hold the tenant's security deposit of \$1,950.00 and pet damage deposit of \$1,950.00 which has accrued \$0.00 in interest since the start of the tenancy.

Tenant's Claim

As the landlord applied within the 15 day timeline of the end of tenancy date, I find the tenant is entitled to the return of their original security deposit and pet damage deposit plus \$200.00 fob deposit less the amount of the landlord's claim of \$300.00 noted below. I also find the tenant's claim has merit and that the tenant is entitled to the recovery of the cost of the filing fee of \$100.00 pursuant to section 72 of the Act.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$300.00** and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's security deposit and pet damage deposit as follows:

ITEM DESCRIPTION	AMOUNT
1. Loss of one month's rent	Dismissed
2. Professional carpet cleaning	Dismissed
3. Wool carpet replacement	Dismissed
4. Damaged massage chair	Dismissed
5. Move-out fee	\$200.00
6. Cable and internet bills not paid / loss of rent	Dismissed
7. Filing fee for landlord	\$100.00
Subtotal for landlord	\$300.00
<i>Tenant's combined security deposit and pet damage deposit</i>	<i>\$3,900.00</i>
<i>Tenant's fob deposit</i>	<i>\$200.00</i>
<i>Filing fee for tenant</i>	<i>\$100.00</i>
Subtotal for tenant	\$4,200.00
\$4,200.00 tenant claim <u>less</u> \$300.00 landlord claim; TOTAL OWING BY LANDLORD TO TENANT	\$3,900.00

Pursuant to section 72 of the Act, I authorize the landlord to retain \$300.00 of the tenant's security deposit of \$1,950.00 in full satisfaction of the landlord's monetary claim and I find the landlord owes the tenant **\$3,900.00** after applying the filing fees for both parties, and the fob deposit for the tenant as noted above.

I ORDER the landlord to immediately pay the tenant \$3,900.00 accordingly. Should the landlord fail to comply with my order, I grant the tenant a monetary order pursuant to section 67 of the *Act* for the balance owing by the landlord to the tenant in the amount of \$3,900.00.

Conclusion

The landlord's application is partially successful.

The tenant's application is successful.

After offsetting the \$300.00 landlord's monetary claim from the tenant's \$4,200.00 monetary claim, I find the landlord owes the tenant \$3,900.00 as noted above. The landlord has been ordered to immediately return that amount to the tenant. Should the landlord fail to comply with my order, the tenant has been granted a monetary order under section 67 for the balance due in the amount of \$3,900.00. Should the tenant require enforcement of this monetary order the tenant must first serve the landlord with the monetary order and the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 3, 2018

Residential Tenancy Branch