



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL, MNSD, FFT

Introduction

This hearing dealt with cross applications filed by the parties. On May 14, 2018, the Landlord applied for a dispute resolution proceeding seeking a Monetary Order for outstanding utilities, seeking a Monetary Order for compensation for a missing couch, and to apply the security deposit and pet damage deposit towards this debt, pursuant to section 67 of the *Act*. The Landlord is also seeking to recover the filing fee pursuant to section 72 of the *Act*.

On May 22, 2018, the Tenant applied for a dispute resolution proceeding seeking a return of the security deposit and pet damage deposit pursuant to section 38 of the *Act* and seeking to recover the filing fee pursuant to section 72 of the *Act*.

R.H. attended the hearing as the Landlord and J.W. attended as her witness. P.R. attended the hearing as the Tenant. All parties provided a solemn affirmation.

Both the Landlord and the Tenant confirmed that they served the other party with their respective Notice of Hearing packages by registered mail and both parties confirmed receipt of them. As such, and in accordance with sections 89 and 90 of the *Act*, I am satisfied that the parties were served with the respective Notice of Hearing packages.

The Landlord advised that part of her claims were for outstanding utilities owed in the amount of \$336.96; however, during the hearing, both parties confirmed that this debt had been settled. As such, I am satisfied that this part of the Landlord's claim is settled and I dismiss this portion of the Landlord's claim.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral

and written submissions before me; 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 a monetary award for compensation for a couch pursuant to section 67 of the *Act*?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards these debts, pursuant to section 72 of the *Act*?
- Is the Landlord entitled to recover the filing fee pursuant to section 72 of the *Act*?
- Is the Tenant entitled to a return of the security deposit and pet damage deposit pursuant to section 38 of the *Act*?
- Is the Tenant entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Landlord stated that the tenancy started on May 1, 2017 as a fixed term tenancy ending on April 30, 2018. Rent was established at \$950.00 per month, due on the first day of each month. A security deposit of \$475.00 and a pet damage deposit of \$475.00 were paid. The Tenant confirmed these details.

The Landlord is claiming for \$200.00 due to a couch that was provided at the beginning of the tenancy but was not in the rental unit at the end of the tenancy. She submitted that in section 3 of the tenancy agreement, she checked off the "Furniture" box to indicate what is included in the rent and she referenced the addendum to the tenancy agreement where it stated that "Before any alteration of the property, permission must be given by the landlord." She stated that the couch was not new but was in "pristine" condition and would cost \$200.00 to replace. She referenced the pictures she submitted to corroborate the condition of the couch.

The Tenant submitted that when she viewed the rental unit, the couch was in there. She told the Landlord that she did not want the couch so she asked the Landlord to remove it. Later, when the Tenant moved in, she again asked the Landlord to remove the couch but the Landlord told her to remove it herself if she did not want it. The Tenant had her movers remove and dispose of the couch, at her own expense and she advised that the movers can corroborate this conversation with the Landlord. She estimated that the couch is an early 1980s vintage. She also stated that the tenancy agreement does not specifically list a couch as being provided as part of the tenancy, or any of the other furniture that was provided.

The Landlord stated that when the Tenant arrived at the rental unit, a queen bed with nightstands and a couch were included in the tenancy. The Tenant advised that she had a newer couch and did not need the one provided. The Landlord responded that the rental unit must have a couch so the Tenant could alternately leave her own couch at the end of the tenancy. She stated that she has an emotional attachment to the couch due to a tragic family incident and she would have never advised the Tenant to get rid of the couch.

The Tenant stated that there is no way to quantify the sentimental value that the Landlord placed on the couch. The Tenant looked at thrift stores and advised that comparable couches there were not valued at \$200.00, but closer to \$50.00. She submitted that the Landlord did not provide any third-party verification or evidence to corroborate that the couch should be valued at \$200.00.

The Tenant's claim is for a return of double the damage deposit as the Landlord has not complied with the *Act*. The Tenant submitted that her forwarding address in writing was provided on the move out inspection report on April 29, 2018. The landlord did not dispute this testimony.

Analysis

When establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Even though the Landlord does not specifically detail what furniture is included in the tenancy, the consistent and undisputed evidence before me is that a couch was in the rental unit when the Tenant moved in. Both parties have provided conflicting evidence with respect to the conversation regarding the couch. I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The undisputed evidence before me is that both parties confirmed that the couch was in the rental unit at the start of the tenancy. It does not make sense to me that the

Landlord would provide a furnished rental unit and then advise the Tenant that it was ok to throw pieces of furniture out. As such, I am not satisfied that there was an agreement that the couch could be disposed of. However, in reviewing the pictures of the couch, based on appearance of the age and the condition of the couch, I am not satisfied that the Landlord substantiated a value of the couch at \$200.00. Consequently, I grant the Landlord a nominal amount of compensation in the form of a Monetary Order of \$50.00.

With respect to the Tenant's Application, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the *Act*.

The undisputed evidence before me is that the Tenant provided a forwarding address in writing on April 29, 2018. Furthermore, the Landlord made an Application to claim against this deposit within the 15 days as required by the *Act*. As such, I am satisfied that the Landlord complied with the requirements of the *Act* with respect to dealing with the security deposit and pet damage deposit. Consequently, the security deposit and pet damage deposit will not be doubled in this instance.

Based on the evidence before me, I am satisfied that the Tenant should be awarded a return of her security deposit and pet damage deposit. As such, I grant the Tenant a Monetary Order in the amount of \$950.00. Furthermore, as the Tenant was successful in her claim, I find that she is entitled to recover the \$100.00 filing fee paid for this application.

As the Landlord was partially successful in her claim, I find that she is entitled to recover \$50.00 of the \$100.00 filing fee paid for this application.

Pursuant to sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Security deposit	\$475.00
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Pet damage deposit	\$475.00
Recovery of filing fee (Tenant)	\$100.00
Compensation for couch	\$-50.00
Partial recovery of filing fee (Landlord)	\$-50.00
TOTAL MONETARY AWARD	\$950.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$950.00** 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 24, 2018

Residential Tenancy Branch