



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and **were given a full opportunity to be heard**, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background, Evidence

The landlord's testimony is as follows. The tenancy began on August 16, 2017 and ended on July 25, 2018. The tenants were obligated to pay \$2500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1250.00 security deposit. The landlord testified that the tenants left the suite dirty and damaged at move out. The landlord testified that the tenant also damaged a lawn tractor.

The landlord is applying for the following:

1.	New lawn tractor	\$2912.00
2.	Landscaping ½ Acre	400.00
3.	House cleaning	300.00
4.	Removal of stains from hardwood	275.00
5.	Removal of destroyed furniture	100.00
6.	Removal of adhesives	100.00
7.	Filing Fee	100.00
8.	Minus Deposit	-1250.00
	Total	\$2937.00

The tenant gave the following testimony. The tenant adamantly disputes the landlords' claims. The tenant testified that the landlord breached the Act on numerous occasions, specifically; in regards to the move in and move out condition inspections. The tenant testified that the landlords claim should be dismissed and that the tenants should be given double their deposit back.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the

damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords' claims and my findings as follows.

Damages, Repairs and Cleaning - \$4087.00.

The landlord conceded that he has not replaced the lawn tractor. In addition, he acknowledged that he did not submit any receipts for this hearing to support the amount as claimed. As noted above, the applicant must satisfy all four factors to be granted a monetary order. The landlord has failed to provide sufficient evidence of the actual monetary amount of the loss or damage, accordingly; I dismiss this portion of the landlords' application.

Security Deposit- \$1250.00

Both parties alleged that the other had extinguished their right to the security deposit. The landlord submitted that the tenant had not attended the move out condition inspection and therefore waived their right to the deposit. The tenant adamantly disputes this claim and testified that he was not given two opportunities by the landlord to attend.

In addition, the tenant submits that the landlord had previously waived their right to the deposit and submitted a document noting their reasons as follow:

"Failing to provide us with a copy of the Condition Inspection Report; Failing to schedule a final inspection with us; Completing the Final Inspection Report without us being present; Committing forgery/fraud in the Final Inspection Report by writing information on the form that tenants are only legally permitted to write; Failing to provide us with a copy of the improperly-completed and forged/fraudulent Final Inspection Report; Failing to return the security deposit within 15 days and Making numerous false, misleading, exaggerated and imagined claims in their application for dispute resolution."

The landlord did not dispute that he had not provided a copy of the move in condition inspection report as required. Section 24 of the Act addresses the issue before me as follows.

Consequences for tenant and landlord if report requirements not met

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the above, I find that the landlord had extinguished his rights to the security deposit and was the first of the two parties to commit a breach in this regard. However, the tenants' view that he is entitled to the return of double the security deposit is incorrect. The tenant testified that he e-mailed his forwarding address to the landlord on April 22, 2018. An email is not one of the means that a party is permitted to serve a document under section 88 of the Act. In addition, section 38 notes the following:

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 the tenant did not provide their forwarding address in accordance with section 88 of the Act and therefore did not trigger the doubling provision. I also find that the landlord did apply within fifteen days of the tenancy ending.

Based on all of the above I find that the tenant is entitled to the return of the \$1250.00 security deposit.

The landlord has not been successful in their application.

Conclusion

The landlords' application is dismissed in its entirety. The landlords are to return the \$1250.00 security deposit to the tenants. I grant the tenants an order under section 67 for the balance due of \$1250.00. This order may be filed in the Small Claims 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: October 02, 2018

Residential Tenancy Branch