



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT, MNDL-S, MNCDL-S, FFL

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

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

- a monetary order for damage to the rental unit 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord 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.

As the tenant confirmed that they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on April 4, 2018, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*. Similarly, as the landlord confirmed having received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on September 1, 2018, I find that the landlord was also duly served with that package in accordance with

section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) 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 tenant entitled to a monetary award for the return of a portion of their deposit? Is the tenant entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover the filing fee for this application from one another?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous documents, invoices, receipts, text messages, written statements from the landlord's cleaner/painter who assisted the landlord in the cleanup of the rental unit at the end of this tenancy, written statements from the person who renovated the premises prior to the commencement of this tenancy and viewed the premises shortly before the tenancy ended, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of these claims and my findings around each are set out below.

This tenancy began on January 15, 2011, when the parties entered into a two-year fixed term tenancy agreement for a completely furnished basement rental suite. According to the terms of that agreement, the tenant paid a monthly rent of \$1,000.00 to the landlord on the 15th of each month, payable in advance. The landlord continues to hold the tenant's \$500.00 security deposit paid in January 2011. The parties signed two additional tenancy agreements, each for two year periods, after the expiration of the initial term of the first tenancy agreement.

On or about February 13, 2018, the tenant sent the landlord a text message advising of his intention to end his tenancy on March 14, 2018.

The tenant provided the landlord with a forwarding address in writing on March 26, 2018, which the landlord acknowledged receiving.

On April 3, 2018, the landlord applied for a monetary award of \$666.69 for the following items:

Item	Amount
Cleaning	\$587.50
Repair of Damaged Wall	40.00
Replacement of Missing Power Cord for Blue Ray Player	39.19
Total Monetary Award Requested	\$666.69

The landlord applied at that time for authorization to retain the tenant's security deposit in partial satisfaction of the monetary award requested, as well as for the recovery of the \$100.00 filing fee for their application.

The tenant's application for the return of \$460.00 from their security deposit accepted the landlord's application for recovery of \$40.00 to repair the damaged wall. The tenant also requested recovery of their \$100.00 filing fee.

The parties agreed that no joint move-in or joint move-out condition inspections were undertaken or requested by the landlord, and that no reports of any inspections were completed, nor provided to the tenant.

The landlord provided six photographs of various aspects of the rental unit at the end of this tenancy. The landlord entered into written evidence undisputed sworn testimony supported by written evidence from the contractor who renovated the basement unit immediately before this tenancy began that this rental unit was in pristine condition prior to the commencement of the tenancy. The landlord maintained that on each occasion when they inspected the rental unit for insurance purposes, which commenced occurring on an annual basis during the course of this tenancy, the landlord found that the tenant's maintenance and housekeeping were very deficient. The landlord provided undisputed written evidence and sworn testimony that the tenant exhibited the characteristics of a hoarder and that the rental unit was often littered with an excess of possessions that kept the rental unit continually cluttered and below common standards for maintenance of a living unit. Although the landlord provided the tenant with a vacuum cleaner, the landlord maintained that the premises were not kept clean whenever she inspected the premises.

At the end of the tenancy on March 14, 2018, and after the tenant claimed to have cleaned the rental unit, the landlord and the painter who was expecting to commence painting the rental unit the following day discovered that the rental unit was badly in need of an extensive cleaning. At the hearing, the landlord described each of the photographs, noting that three full 20 litre kitchen bags were filled with dust and dirt from the cleaner's vacuuming of the tenant's 20 foot by 20 foot bedroom. The statements from the cleaner and the renovator described the condition of the rental unit in considerable detail, each expressing amazement at the extent to which the rental unit had been absent of proper cleaning at the end of this tenancy. The landlord provided a detailed breakdown of the timesheet that the cleaner/painter devoted to cleaning the rental unit, sometimes with the assistance of the landlord, after this tenancy ended.

The landlord also maintained that a power cord for the landlord's Blue Ray player went missing at the end of this tenancy and was not replaced by the tenant. The landlord supplied a receipt for this cord.

The tenant acknowledged that some of the photographs were of the rental unit, but as he was not present when they were taken, he questioned their accuracy. The tenant maintained that he did not have the strength to move the heavy bed in the bedroom of the rental unit, so had no way of cleaning the carpet underneath that bed. He also denied having taken the power cord for the Blue Ray player. The tenant maintained that the landlord only advised him late on March 14, 2018 that the rental unit was not cleaned to her satisfaction. Although he offered to return to the rental unit the following day or a few days later with his wife to undertake more cleaning, the landlord rejected this request.

Analysis - Security Deposit

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. The parties agreed that no joint move-in condition inspection was conducted, nor did the landlord produce any report of a joint move-in condition inspection. Similarly, no joint move-out condition inspection was requested by the landlord nor conducted, and no move-out inspection report was issued by the landlord.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be

issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

- 23** (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
- (2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*
 - (b) a previous inspection was not completed under subsection (1).*
- (3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
- (4) *The landlord must complete a condition inspection report in accordance with the regulations.*
- (5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
- (6) *The landlord must make the inspection and complete and sign the report without the tenant if*
- (a) the landlord has complied with subsection (3), and*
 - (b) the tenant does not participate on either occasion...*

Section 24(2) of the *Act* reads in part 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...

Sections 36 and 37 of the *Act* establish similar provisions regarding a joint move-out condition inspection and the report to be produced by the landlord regarding that inspection.

Section 38 of the *Act* requires the landlord to either return all of a tenant's deposits or file for dispute resolution for authorization to retain a deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur or if the landlord applies to retain the deposits within the 15 day time period but the landlord's right to apply to retain the tenant's deposit had already been extinguished, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the deposit in addition to the return of the original deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In this case, while the landlord filed the application to retain the deposit within 15 days of receiving the tenant's forwarding address on March 26, 2018; however, the landlord's right to retain the deposit was extinguished at the beginning of this tenancy in accordance with section 24(2) of the *Act*. I also note that the landlord failed to meet any of the requirements relating to the joint move-out condition inspection and report, which also extinguished the landlord's right to apply to retain the deposit. As there is undisputed evidence that the tenant has not given the landlord written authorization to retain the tenant's deposit, I find that the tenant is entitled to a monetary award equivalent to double the value of the \$500.00 security deposit retained by the landlord. This monetary award is issued pursuant to section 38(6) of the *Act*.

Analysis - Landlord's Claim for Damage

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord's failure to abide by the provisions of 38 of the *Act* in returning the security deposit to the tenant does not prevent the landlord from submitting a separate claim for damage or loss arising out of the tenancy.

Paragraph 37(2)(a) of the *Act* establishes that when a tenant vacates a rental unit the tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear."

In this case, I found the landlord's sworn testimony, written and photographic evidence provided a compelling account of the deplorable condition of the rental unit when the landlord took possession at the end of this tenancy. Although there was no joint move-in inspection report, the tenant did not dispute the landlord's claim, supported by the statement of the landlord's renovation person, that this rental unit was in very good and clean condition when this tenancy started. Each of the landlord's photographs

demonstrated a particularly sub-standard level of cleaning, including evidence of dust, grime, dirt and corrosion of parts of the landlord's furniture, appliances and even plumbing fixtures. The tenant was to have vacated the rental unit by 1:00 p.m. on the final day of the tenancy; the tenant's offer to come back the following day or a few days later to undertake more cleaning along with his wife does not meet the requirement to end the tenancy on the last day of the period when rent had been paid, in this case, March 14, 2018.

Based on the very strong written statements from the renovator and the cleaner/painter, I have little doubt that it would take at least the number of hours identified in the timesheet provided by the landlord and the cleaner to restore this rental unit to an acceptable level of cleanliness. I find that the landlord has submitted sufficient evidence that the rental unit was not left reasonably clean by the tenant at the end of this tenancy and that the amount claimed for cleaning by the landlord is completely justifiable under the circumstances. For these reasons, I allow the landlord's claim for \$587.50 for cleaning this rental unit at the end of this tenancy.

As the tenant has not disputed the landlord's claim of \$40.00 for the repair of damage to the wall, I also allow this element of the landlord's claim.

In considering the landlord's claim for the replacement of the power cord for the landlord's Blue Ray player, I was confronted with conflicting evidence from the parties. The landlord said that it was missing at the end of this tenancy; the tenant said that he did not take it. The tenant also maintained that the premises were not secured properly by the landlord for a short time after the end of this tenancy, which may have led to the removal of this item by some unknown person.

Although I have given the tenant's assertion regarding the possibility that someone else may have taken the power cord for the Blue Ray player careful consideration, I think it highly unlikely that someone would enter a rental unit and take a power cord specific to a Blue Ray player, but leave the Blue Ray player itself behind.

Overall, I found the landlord's written evidence and sworn testimony far more credible than that provided by the tenant with respect to the condition of the rental unit at the end of this tenancy. I extend this finding regarding credibility to the issue of the missing power cord for the Blue Ray player, and allow the landlord's claim of \$39.19 for the replacement of this item.

As both parties were successful in parts of their application, I find that both parties are entitled to recover their \$100.00 filing fees from one another, a finding which essentially cancels out each of these awards.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover double the value of their security deposit less the landlord's recovery of damage arising out of this tenancy,

Item	Amount
Cleaning	\$587.50
Repair of Damage to Wall	40.00
Replacement of Power Cord for Blue Ray Player	39.19
Recovery of Landlord's Filing Fee	100.00
Less Return of Double Security Deposit as per section 38 of the Act (\$500.00 x 2 = \$1,000.00)	-1,000.00
Less Recovery of Tenant's Filing Fee	-100.00
Total Monetary Order in Tenant's Favour	\$333.31

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 26, 2018

Residential Tenancy Branch