



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord required to pay the Tenant double the security deposit?

Background and Evidence

The tenancy started on May 1, 2015. At the outset of the tenancy the Landlord collected \$340.00 as a security deposit. At move-in the Landlord did not complete a move-in inspection report with a copy provided to the Tenant. No move-out inspection was conducted.

The tenancy ended as a result of the Landlord ending the tenancy with a notice to end tenancy. The Tenant states that she moved out on January 15, 2018 and returned the

keys on January 30, 2018. The Landlord states that the Tenant moved out of the unit on February 1, 2018.

The Landlord states that he received the Tenant's forwarding address on or about March 1, 2018. The Tenant states that the forwarding address was sent to the Landlord by registered mail on January 4, 2018.

The Landlord states that the Tenant left the unit unclean and with damages and claims \$1,200.00. The Landlord did not provide a monetary order worksheet. The Landlord states that the unit was renovated for his brother to move into the unit. The Landlord states that the Tenant left the following damages:

- a broken kitchen tap;
- a chipped fridge drawer;
- a broken light fixture broken;
- a clogged bathroom sink;
- scratched living room and bedroom walls;
- a stain under the bathroom sink cabinet;
- power outlets pulled away from the living room wall;
- a closet door removed from its hinges;
- unclean side and beneath the kitchen stove;
- a portion of the house siding melted by a barbeque; and
- a smoke alarm missing batteries.

The Landlord states that the monetary amount being claimed was based on costs and labour estimated by the Landlord. The Landlord states that he did the work himself. The Landlord did not provide an invoice detailing the tasks done, the time taken for each task and the hourly rate being charged. The Landlord thinks he spent about 3 or 4 days to make the repairs. The Landlord states that no repairs were made to the fridge drawer as the entire fridge was replaced. The Landlord states that the light with the damaged fixture was changed entirely to a new light fixture. The Landlord states that

he unplugged the sink. The Landlord states that he painted all the walls of the unit and the bathroom sink cabinet. The Landlord states that he removed the outlets to paint and then replaced them with new screws. The Landlord states that he bought a new closet door. The Landlord states that the stove was on wheels and was cleaned by the Landlord. The Landlord states that the siding damage was cosmetic only and has not been repaired. The Landlord states that the smoke alarm was replaced with a new and better alarm that works better than the old alarm.

The Tenant states that the unit was left completely clean and that the Tenant caused absolutely no damage. The Tenant provides photos of the state of the unit at move-out. The Tenant states that the stain under the sink was present at move-in and that as the stove did not have wheels the Tenant could not pull the stove out to clean it. The Tenant states that when the keys were returned to the Landlord no mention was made of any damages to the unit. The Tenant believes that the Landlord made a false claim out of retaliation for the Tenant wanting return of her security deposit

Analysis

Section 37 of the Act provides 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, and 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. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary.

Overall I found the Landlord's evidence to support its claims of damage and costs to be insufficient: there is no move-out or move-in report, there are no invoices, and there is no monetary order worksheet detailing the costs being claimed for each of the items being damaged. Given the Tenant's photos, the lack of a move-in and move-out condition report and considering the Tenant's evidence of having caused no damages I find on a balance of probabilities that the Landlord has not substantiated that the Tenant damaged the kitchen tap, closet door, bathroom sink, bathroom cabinet, light fixture or wall outlet. Given the Landlord's evidence that the entire unit was repainted while only two wall marks are said to have been caused by the Tenant and given the lack of an invoice I find that the Landlord has not substantiated any amount of costs and has not acted to mitigate costs. As the Landlord replaced the entire fridge and the entire smoke alarm I find that the Landlord has not acted to mitigate any costs being claimed nor has the Landlord substantiated any replacement costs for a broken drawer or smoke alarm batteries.

As both Parties give equally plausible evidence on whether the stove has wheels, I find on a balance of probabilities that the Landlord has not substantiated that the stove had wheels to allow the Tenant to move and clean the stove. Further, even if the stove had wheels and the Tenant did not clean the stove, the Landlord has not provided any evidence of its costs for cleaning this particular item. I therefore dismiss the claim in relation to the stove. As the Landlord has only provided evidence of esthetic damage to the siding and no evidence of any apportionment of costs to repair the area damaged I find that the Landlord has not substantiated any costs for this claim. As the Landlord has not substantiated either all the damages or the costs claimed I decline to award recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Section 23 of the Act provides that 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 and the landlord must complete a condition inspection report and provide a copy to the tenant in accordance with the regulations. Section 24 of the Act provides that 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 does not make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. Based on the undisputed evidence that no move-in condition inspection report was completed and copied to the Tenant I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides that if a landlord's right to claim against the security deposit has been extinguished and the Landlord's claims are only in relation to damage to the deposit, the landlord remains at liberty to make an application to claim for the damages. However where the right to claim against the security deposit for damaged to the unit has been extinguished the Landlord must return the security deposit within the 15 day period. If in this situation the Landlord does not return the security deposit, the return of double the security deposit will be ordered on the Landlord's application to retain the security deposit. Based on the undisputed evidence that the Landlord did receive the Tenant's forwarding address and did not return the security deposit I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$680.00**.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$680.00**. If necessary, 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: September 05, 2018

Residential Tenancy Branch