



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking authority to withhold the Tenant’s security deposit and monetary compensation for unpaid rent, damage to the rental unit, money owed or damage or loss under the *Act*, regulation or tenancy agreement, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be sent to them by e-mail at the email addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that the name of the landlord on the tenancy agreement does not match the name of the landlord on the Application. K.S. stated that she purchased the property from the previous owner, who was the Tenant’s original landlord, on July 1, 2017, and that she took over the Tenant’s existing tenancy as a result.

Section 1 of the *Act* includes in the definition of a landlord, the owner of the rental unit, and section 93 of the *Act* states that the obligations of a landlord under the *Act* with respect to a security or pet damage deposit run with the land or reversion. Based on the above, I am satisfied that K.S. became the landlord of the existing tenancy when she purchased the property. As a result, she will therefore be referred to throughout this decision as the “Landlord”.

Preliminary Matter #2

Although the parties disputed how and when a copy of the Application and the Notice of Hearing were served on the Tenant, ultimately the Tenant acknowledged receiving them, by regular mail, at his new address sometime near the end of February 2018. As a result, and pursuant to sections 71(2)(b) and 71(2)(c) of the *Act*, I therefore find that the Application and the Notice of Hearing were sufficiently served on the Tenant for the purpose of the *Act* no later than February 28, 2018. As a result, the hearing proceeded as scheduled.

Preliminary Matter #3

The Landlord testified that at the time she filed her Application and served the Tenant with copies of the Application and the Notice of Hearing, she did not have the documentary evidence before me ready. As a result, she stated that she sent the documentary evidence before me to the Tenant, by regular mail, on August 29, 2018. The Tenant stated that he moved from the forwarding address given to the Landlord in March but paid for mail forwarding. He stated that despite having paid for mail forwarding, he never received anything from the Landlord in relation to this hearing other than the Application and the Notice of hearing received at the end of February.

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) states that to the extent possible, the applicant should submit copies of all documentary and digital evidence to be relied on in the proceeding at the time the Application is submitted. Given the nature of the documentary evidence before me from the Landlord, such as a copy of the tenancy agreement, the move-in and move-out condition inspection report, and pictures of the rental unit at the end of the tenancy, I see no reasonable reason why this evidence could not have been made available at the time the Application was filed, or shortly thereafter.

Rule 3.5 of the Rules of Procedure states that at the hearing, the Applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with all of their evidence as required by the *Act* and the Rules of Procedure. Further to this, rule 3.11 of the Rules of Procedure states that evidence must be served as soon as reasonably possible and that if the arbitrator determines that a party unreasonably delayed the service of evidence, they may refuse to consider it.

The Landlord filed her Application on February 19, 2018 and the hearing of this matter was scheduled for September 17, 2018, at 1:30 P.M. The Landlord testified that she did not send the documentary evidence before me to the Tenant until August 29, 2018. Further to this, she stated that she sent the evidence by regular mail and failed to provide any proof of this mailing. As stated above, I find no reasonable reason why the documentary evidence intended to be relied on by the Landlord in the hearing could not have been submitted to the Branch and served on the Tenant at the time of the Application, or shortly thereafter. As a result, I find that the Landlord unreasonably delayed the service of this evidence. The Tenant has also denied receipt of this evidence and I find that the Landlord has failed to satisfy me that it was sent by her, as described, on August 29, 2018, as she has submitted no evidence to corroborate her testimony.

As a result, and pursuant to rules 3.5 and 3.11 of the Rules of Procedure, I therefore exclude the Landlord's documentary evidence from consideration in the hearing as I find that it would be administratively unfair and a breach of both the Rules of Procedure and the Principles of Natural Justice to accept it for consideration in this matter.

The Tenant testified that he did not submit any documentary evidence for consideration in this matter. As a result, this decision is based on the testimony provided by the parties in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation for damage or loss and to withhold the Tenant's security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the fixed-term tenancy began on May 15, 2017, and that rent in the amount of \$1,000.00 is due on the first day of each month. The parties agreed that the end of the fixed term was set as May 31, 2018, and that \$550.00 was paid by the Tenant as a security deposit. The Landlord acknowledged receiving the \$550.00 security deposit from the previous owner, who was the landlord at the start of the tenancy, and both parties agreed that no pet deposit was paid. The Landlord also acknowledged that she still holds the \$550.00 security deposit.

The parties agreed that the tenancy ended on February 3, 2018, but disputed when the Tenant's forwarding address was received in writing. The Tenant testified that it was received on February 5, 2018; however, the Landlord testified that it was received on February 3, 2018, the date the tenancy ended. The Tenant confirmed that a condition inspection was completed with the original landlord at the start of the tenancy and that one was also completed with the Landlord and his agent at the end of the tenancy.

The Landlord testified that the move-in condition inspection report shows that the property was clean and in good condition at the start of the tenancy; however, the Tenant testified that the blinds in the rental unit were damaged at the start of the tenancy and that there was already a hole in the wall which the original landlord had covered poorly with a metal plate. The Tenant stated that he received the original landlord's permission to remove the metal plate and patch the hole and to paint a bedroom. He also stated that the rental unit was not clean at the start of the tenancy.

The Landlord testified that at the end of the tenancy, the front door was so damaged that it required patching, painting, and new hardware. She stated that the blinds were damaged by the Tenant's dog and that a recently installed smoke detector was also missing. Further to this, she stated the poor patch job done by the Tenant needed to be redone and that the rental unit was unclean, requiring 5 hours of cleaning. As a result, the Landlord sought \$150.00 for the cost of repairing the door, \$150.00 for 5 hours of cleaning, \$50.00 for the replacement of the smoke alarm, \$100.00 for the cost of replacing the blinds and \$20.00 for the cost of re-doing the Tenant's wall patch.

Although the Tenant acknowledged that he damaged the front door, he stated that he followed the Landlord's instructions and repaired it. As a result, he stated the Landlord should not be entitled to the \$150.00 sought for its repair. The Tenant denied that his dog damaged the blinds and stated that he had permission from the original landlord to patch the wall. As a result, he stated he should not be responsible for these costs.

Further to this, the Tenant stated that the rental unit was clean at the end of the tenancy as he paid his friend to clean it. However, he did acknowledge that the areas beneath and behind the appliances were likely not cleaned. The Tenant also acknowledged that the smoke detector was accidentally taken by the agent he appointed to clean the rental unit and complete the walk-through and stated that it has not been returned.

The Landlord also sought \$110.00 in outstanding rent as she stated the Tenant overheld the rental unit from February 1, 2018, - February 3, 2018; however, the Tenant testified that he already paid the Landlord \$140.00 for these three days. Further to this, the Landlord requested authority to withhold \$100.00 from the Tenant's security deposit for a previous outstanding Monetary Order. The Tenant acknowledged receipt of the \$100.00 Monetary Order but was unsure whether he had already paid the Landlord for this or not.

Analysis

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, regulation, or tenancy agreement, the non-complying party must compensate the other for any damage or loss that results. Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the party making the claim has the onus to prove their case.

Although the Landlord stated that the Tenant was liable for the cost of replacing blinds, and patching a wall, the tenant stated that the unit was undamaged at the end of the tenancy, except for damage caused to the front door and damage already present at the start of the tenancy. As a result of the above and in the absence of documentary or other evidence before me from the Landlord in support of her testimony, ultimately I find that the Landlord has not satisfied me, on a balance of probabilities, that she is entitled to the \$120.00 sought I therefore dismiss her \$100.00 claim for the replacement of blinds and her \$20.00 claim for replacing a wall patch without leave to reapply.

The Landlord also stated that the Tenant was liable for the cost of cleaning the rental unit; however, the tenant stated that the unit was reasonably clean at the end of the tenancy, except for the areas under and behind the kitchen appliances. As a result of the above and in the absence of documentary or other evidence before me from the Landlord in support of her testimony, ultimately I find that the Landlord has not satisfied me, on a balance of probabilities, that she is entitled to the amounts sought for cleaning of the rental unit. However; given the Tenant's testimony regarding the failure to clean under the kitchen appliances, I award the Landlord \$50.00 for these cleaning costs.

The Tenant acknowledged in the hearing that a smoke alarm was removed from the rental unit and that he damaged the front door. Section 32 of the *Act* states that a tenant of a rental unit must repair damage to the rental unit, other than reasonable wear and tear, caused by their actions or neglect. Despite the Tenant's testimony that he followed the Landlord's advice and simply glued the front door back together, I do not find that simply gluing a damaged front door back together constitutes a reasonable repair. As a result, I grant the Landlord's claim for \$150.00 in costs to have the door properly repaired, painted and re-hung. I also grant the Landlord's \$50.00 claim for the replacement of the smoke alarm as the Tenant acknowledged this was accidentally taken and not returned.

As the parties disagreed about whether rent was paid by the Tenant for February 1, 2018, - February 3, 2018, and there is no documentary or other evidence before me for consideration in support of the Landlord's testimony that this was not paid, I therefore dismiss the Landlord's claim for \$110.00 in outstanding rent without leave to reapply.

As the parties agreed that the Landlord had a \$100.00 Monetary Order against the Tenant from the Branch at the end of the tenancy, and the Tenant stated that he could not recall if this amount had been paid, I therefore accept the Landlord's affirmed testimony that it remains unpaid. Section 38(3) of the *Act* states that a landlord may retain from a security deposit, an amount that the director has previously ordered the tenant to pay to the landlord and at the end of the tenancy remains unpaid. As a result, I find that the Landlord was authorized to retain \$100.00 from the Tenant's security deposit at the end of the tenancy in repayment of this outstanding Monetary Order.

Section 38(1) of the *Act* also states that except as provided for in sections 38(3) and 38(4)(a) of the *Act*, within 15 days of the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit, as provided in subsection (8), to the tenant with interest calculated in accordance with the regulation or make an application for dispute resolution claiming against the security deposit. Although the parties disagreed about the date upon which the Tenant's forwarding address was received in writing, as the Landlord's Application claiming against the Tenant's security deposit was filed February 19, 2018, I therefore find, pursuant to section 25 of the *Interpretation Act*, that it was filed in compliance with section 38(1) of the *Act* regardless of whether it was received on February 3, 2018, or February 5, 2018. As both parties agreed that move-in and move-out condition inspections were completed and neither party raised any

arguments in relation to sections 25 of 36 of the *Act*, I am also satisfied that neither party extinguished their rights in relation to the security deposit. As the Landlord was only partially successful in her Application, I grant her only \$50.00 towards the cost of the filing fee pursuant to section 72 of the *Act*.

Based on the above, the Landlord is therefore entitled to withhold \$400.00 from the Tenant's security deposit and pursuant to Residential Tenancy Policy Guideline 17, the Tenant is entitled to a Monetary Order in the amount of \$150.00 for the balance of the security deposit remaining.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

Conclusion

The Landlord is entitled to withhold \$400.00 from the Tenant's security deposit.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$150.00. The Tenant is provided with this Order 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: October 19, 2018

Residential Tenancy Branch