



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MNR, MND, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for unpaid rent, for loss of income, for the cost of repairs and for the filing fee. The landlord also applied to retain the security deposit in satisfaction of his claim. The tenant applied for the return of the security deposit and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence. The tenant stated that he received the notice of hearing but there were no evidentiary materials inside the package. The landlord provided proof of service by registered mail and stated that he included his evidence inside the notice of hearing package served on the tenant.

Upon review of the landlord's submission, I find that he filed photographs into evidence 21 days before this hearing and since he served the tenant with only one package on May 11, 2018, which contained the notice of hearing, it is possible that he did not serve the tenant with the materials filed into evidence after that date. I find that the bulk of the tenant's evidence which consists of copies of text messages is the same as the landlord's. The tenant's evidence was used in the making of this decision.

All parties' testimonies have been considered in the making of this decision. As this matter was conducted over 71 minutes of hearing time, I have considered all the written evidence provided by the tenant and the oral evidence provided by both parties but have not necessarily alluded to all the evidence and testimony in this decision.

The tenant's application initially included the application for the return of the security deposit paid by the tenant (AH) who rented a different suite located in the landlord's residence. Since the two tenants are not listed on the same tenancy agreement and since AH occupied a different rental unit, this hearing dealt solely with the return of the tenant's deposit. The other tenant AH will have to make his own application for the return of his deposit.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent, for loss of income and the cost of repairs? Is the tenant entitled to the return of the security deposit?

Background and Evidence

The tenancy started on September 01, 2017. The parties agreed that sometime in November 2017, the parties signed a new tenancy agreement for a tenancy starting December 01, 2017, for a fixed term of five months. The end date of the fixed term was April 30, 2018 which coincided with the tenant's end of school semester. The tenancy ended on this date. The monthly rent was \$600.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$300.00 and a deposit of \$200.00 for a cable box. The rental unit is a suite located on the lower level of the landlord's home. The landlord lives upstairs.

The landlord testified that the tenant paid rent in cash and that he provided receipts for every payment made. The tenant stated that the landlord would not accept any form of payment for rent other than cash and except for the payment of the damage deposit; the landlord did not provide any receipts.

On April 02, 2018, the tenant sent the landlord a text message, informing him that rent for April was placed in the microwave oven. The landlord stated that he visited the rental unit and did not find any money inside the microwave oven. The tenant pointed out to a bank statement in his evidence that indicated that on April 02, 2018, he withdrew \$640.00 out of his bank account. The tenant stated that he is a student and he only made withdrawals in large amounts such as this one, when he had to pay rent.

The landlord stated that he started showing the rental unit to prospective tenants on or about April 15, 2018 but was unsuccessful in finding a tenant for May 2018 as the unit showed poorly due to the messy condition the tenant kept it in. The landlord stated that he suffered a loss of income for May which he wanted to be compensated for.

The landlord stated that the tenant smoked inside the rental unit and there are several burn marks on the carpet and sofa. The tenant denied smoking inside the rental unit and stated that he was not aware of burn marks on the carpet or sofa.

The tenant agreed that there was a hole in the upholstery of the sofa but stated that it was there from the start of tenancy. The landlord stated that there were no burn marks or damage to the sofa at the start of tenancy. The landlord agreed that he did not carry out a move in inspection and therefore was unable to provide a report regarding the condition of the rental unit at the start of tenancy.

The landlord stated that the tenants requested him to provide them with a cable box which he did. He collected a deposit of \$200.00 from this tenant and \$200.00 from the other tenant AH. The landlord stated that on April 30, 2018, he informed the tenant that the power cords to the box were missing. The tenant contacted his friend who agreed that he had borrowed the cords. The tenant asked for a photograph of the box so that he could return the correct cords. The landlord stated that the tenant took the box with him to get the cords and returned the cords but did not return the box. The tenant denied having taken the cable box.

The tenant stated that shortly after he received the cable box he found that he had no use for it and requested the landlord for a higher speed internet. The tenant stated that he preferred to stream videos online and therefore he did not use the cable box for the remainder of the tenancy. The tenant denied having taken the cable box out of the rental unit to retrieve the power cords and also denied having taken the box with him at the end of tenancy.

The landlord is claiming the following:

1.	Rent for April 2018	\$600.00
2.	Loss of income for May 2018	\$600.00
3.	Damage to carpet and sofa	\$600.00
4.	Cost of Cable box	\$400.00
5.	Filing fee	\$100.00
	Total	\$2,300.00

The tenant is claiming the return of his security deposit of \$300.00 plus the deposit for the cable box \$200.00 plus the recovery of the filing fee of \$100.00 for a total of \$600.00

Analysis

Landlord's application:

1. Rent for April 2018 - \$600.00

Based on the testimony of both parties and the copies of the text messages filed into evidence, I find that the tenant had left rent in a mailbox on one prior occasion during the tenancy without any problem. I further find that on April 02, 2018, the tenant informed the landlord that he had left rent for April in the microwave oven. The landlord replied "*Thanks bro*"

Upon viewing the text messages filed into evidence, I also find that from April 02, 2018 to the end of tenancy on April 30, 2018, the landlord did not ask for rent for April 2018. If the landlord had not received rent on April 02, 2018, it makes sense that he would ask the tenant to catch up on rent, during the month of April.

On April 30, 2018, none of the text messages filed into evidence include a request for rent for April. In a message dated May 01, 2018, which is after the tenancy had ended, the landlord asked for rent for April. The tenant filed a copy of his bank statement showing that he withdrew \$640.00 from his bank account on April 02, 2018.

Based on the above, I find on a balance of probabilities, that it is more likely than not that had the tenant not paid rent for April 2018, the landlord would have asked him for rent earlier than May 01, 2018, which was after the tenancy had ended. Therefore also based on a balance of probabilities, I find that it is more likely than not that the tenant paid rent for April 2018 and therefore the landlord's claim for unpaid rent is dismissed.

2. Loss of income for May 2018 - \$600.00

The landlord filed a copy of the tenancy agreement into evidence. The tenancy was a fixed term tenancy with an end date of April 30, 2018. The tenant stated that he had informed the landlord right from the start of the second tenancy agreement that he would be moving out at the end of his school semester which was the end date of the fixed term.

Therefore the tenant is not liable for rent after the tenancy ends. The landlord's claim for loss of income is dismissed.

3. Damage to carpet and sofa - \$600.00

The landlord filed photographs to support his claim. However the tenant stated that he had not received photographic evidence from the landlord. The landlord stated that he included these photographs with his notice of hearing package sent to the tenant on May 11, 2018. The landlord filed these photographs into evidence 21 days before this hearing and the tenant denied having received evidence from the landlord. Since I accept the tenant's testimony that he was not served with this evidence, I am unable to use it in determining the landlord's claim for damages.

The tenant also denied creating burns on the carpet. He agreed that there was a hole in the sofa but stated that it was present at the start of tenancy. The landlord did not carry out a move in inspection and therefore a report was not generated. In the absence of sufficient evidence the landlord's claim for \$600.00, is dismissed.

4. Cost of cable box - \$400.00

The tenant denied having taken the cable box. I accept the tenant's evidence that he did not use the box after he requested the landlord to provide him with high speed internet. Text messages confirm the tenant's testimony. Based on the text messages and the testimony of both parties I find on a balance of probabilities that it is more likely than not that the cable box was left behind by the tenant. In addition, the landlord agreed that the tenant had returned the power cords to the cable box. I find that the landlord has not proven his claim and therefore it is dismissed.

5. Filing fee - \$100.00

The landlord has not proven his claim and therefore must bear the cost of filing his own application.

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the security deposit.

Based on the above, I find that the landlord made an application to retain the deposit in a timely manner and therefore the tenant is not entitled to the return of double the deposit. However since the landlord has not proven his claim he must return the base amount of the deposit to the tenant.

The landlord is holding a security deposit and a cable box deposit of a total of \$500.00 which the tenant is entitled to. Since the tenant has proven his case, I award the tenant the recovery of the filing fee of \$100.00.

Overall the landlord's claim is dismissed in its entirety and the tenant has established a claim of \$600.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant landlord a monetary order in the amount of **\$600.00**.

The landlord's application is dismissed in its entirety

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: November 02, 2018

Residential Tenancy Branch