



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, 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 the cost of repairs, cleaning, loss of income, landscaping and for the filing fee. The tenant applied for the return of double the security deposit and a monetary order for compensation for work done and for the filing fee.

Both parties attended this hearing and were given 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 parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*. Evidence filed on the day of the hearing was not considered in the making of this decision.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over 75 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

During the hearing the landlord went on at length at every opportunity and continued to repeat herself multiple times, despite me asking her not to. The landlord went off topic a few times and had to be reminded to focus on the issues at hand.

Issues to be decided

Is the landlord entitled to a monetary order for the cost of repairs, cleaning, loss of income, landscaping and for the filing fee? Is the tenant entitled to the return of double the security deposit, compensation and the filing fee?

Background and Evidence

The parties agreed to the following: The tenancy started on April 12, 2017 for a fixed term of one year. The tenancy agreement contained a vacate clause. The tenant moved out on April 30, 2018, which was the end date of the fixed term. The monthly rent was \$5,850.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$2,925.00 and a pet deposit of \$1,000.00. The landlord is currently holding a total of \$3,925.00 in deposits.

The landlord stated in her written submission, that she had occupied the rental unit prior to moving out for personal reasons. She stated that she had no experience as a landlord and therefore hired a property manager to manage the rental property.

On April 12, 2017, the tenant attended a move in condition inspection which was conducted by the property manager. A report was generated and signed by both parties. On April 29, 2018 a move out condition inspection was conducted by the property manager in the presence of the tenant. No discrepancies were noted. The tenant provided the landlord with his forwarding address that day. The parties discussed the outstanding utility bill.

The tenant testified that due to a water leak in the pool, the water bill was extremely high and the tenant refused to take responsibility for the entire bill. During the move out inspection, the parties discussed the issue and the tenant agreed to contribute \$1,177.37 towards the outstanding bill. The tenant also agreed to allow the landlord to retain this amount from the deposits and this was recorded on the inspection report that was signed by both parties. A copy of the report was filed into evidence.

The landlord testified that she did not agree with the report and after the tenant had moved out she found several items that were damaged and needed repair or replacement. The landlord filed a list of her claims against the tenant which totalled \$34,874.07.

The tenant stated that 10 days after he moved out the landlord contacted him and he agreed to meet with her. She pointed out various items that needed repair and the tenant agreed to repair the concrete steps and do some other minor repairs. The tenant returned to the rental unit on May 14 and the landlord brought out another list of repairs. The tenant stated that he felt that he was not responsible for additional repairs which included resurfacing the pool patio and landscaping. The parties got vocal with each other and the tenant left to avoid a confrontation.

On May 14, 2018, the landlord made this application for a monetary claim in the amount of \$34,874.07 and also applied to retain the deposits in partial satisfaction of her claim. The tenant responded with a claim of his own. The tenant stated that he wanted the remainder of his deposit and was forced to make this application. The tenant made other monetary claims but during the hearing, he agreed to waive them. The tenant applied for the return of double the deposit and for the recovery of the filing fee.

During the hearing, the landlord's claims were discussed and the tenant agreed that his move out truck damaged two concrete steps and he agreed to pay \$200.00 towards repair. The tenant also agreed that he had returned only one garage door remote opener and agreed to pay \$55.27 to replace the other. The tenant did not agree to the remainder of the landlord's claims as he stated that at the move out inspection everything was in order and the condition report was signed off by the property manager.

Analysis

Landlord's application:

The move out condition inspection report filed into evidence is dated April 29, 2018 and contains the signatures of the property manager and the tenant. The report also indicates that the tenant agreed to a deduction of \$1,177.37 off the deposits to cover his share of the unpaid utility bill. The remainder of the report shows that the rental property was left in a clean and undamaged condition which was either the same or better than the condition of the unit at the start of tenancy.

However the tenant agreed to pay \$200.00 towards the repair of the concrete stairs that were damaged by his move out truck and also agreed that he had returned only one of the two remote garage door openers to the landlord. The tenant agreed to cover the cost of the remote opener in the amount of \$55.27.

The landlord has claimed a loss of income for the month of May 2018. The tenancy was a fixed term tenancy with a vacate clause. The tenant moved out at the end of the fixed term and therefore the landlord is not entitled to rent after the tenancy has ended.

The landlord has also applied for the cost of cleaning the unit. The tenant stated that he had physically moved out on April 18, 2018 and had cleaned the unit. The move out inspection report confirms that the unit was left in a clean condition. Therefore the landlord's application for the cost of cleaning is dismissed.

The landlord has applied for the cost of resurfacing the pool patio. She stated that there were black marks on the surface which appeared to be burn marks. The tenant stated that the patio is surrounded by trees and organic matter from the trees created the black spots. The inspection report does not mention damage to the patio deck and therefore the landlord's claim for the cost of resurfacing the deck is dismissed.

The landlord has also made a claim for the cost of landscaping, replacing a broken crisper, repairs of water damage to the bathroom and weeding and cleanup of the yard. The tenant did not agree to the remainder of the landlord's monetary claim and denied having caused damage to the items that the landlord was claiming for. The inspection report does not indicate that any of the above mentioned items were in need of repair or cleaning and therefore I dismiss the landlord's claim for these items.

The landlord agreed that the move out inspection condition report did not mention any of the damage that she was basing her monetary claim on. She stated that the property manager did not act in her interest and the move out condition report was not a true indication of the condition of the rental unit.

The move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently using a flashlight if necessary as it is the only opportunity to identify damage that the tenant is responsible for. The burden of proof is on the landlord to prove that the tenant is also responsible for additional damage that is identified after the move out inspection and after the report is signed by both parties.

Since the testimony of both parties is conflicting with regard to the condition of the rental unit at the end of tenancy, I will use the move out inspection report which is signed by both parties to assess the damage that the tenant is responsible for.

In this case I find that the tenant is not responsible for the majority of the landlord's claims. The tenant has agreed to cover the cost of repairs to the concrete steps (\$200.00) and to cover the cost of replacing a garage door opener (\$55.27). After a discussion between the tenant and the property manager, the tenant agreed to pay \$1,177.37 towards the outstanding utilities.

Accordingly, I award the landlord the total amount of \$1,432.64. Since the landlord has proven a portion of her claim, I award the landlord the recovery of the filing fee of \$100.00. Therefore the landlord has established a total claim of \$1,532.64.

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.

The landlord agreed that she received the forwarding address of the tenant on April 29, 2018. I find that the landlord made this application within the legislated time frame of 15 days and therefore the tenant is not entitled to the return of double the deposit. However the tenant is entitled to the return of the base amount of the deposit.

The landlord is currently holding \$3,925.00. Since the tenant has proven his claim he is entitled to the recovery of the filing fee of \$100.00. The tenant has established a total claim of \$4,025.00.

Overall the landlord has established a claim of \$1,532.64 and the tenant has established a claim of \$4,025.00. I will use the offsetting provisions of section 72 of the Act to grant the tenant a monetary order in the amount of \$2,492.36 which consists of difference between the established entitlements of both parties

Accordingly, I grant the tenant an 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 a monetary order in the amount of **\$2,492.36**.

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 05, 2018

Residential Tenancy Branch