



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on June 20, 2018. The Tenant applied for the return of her security deposit, and the return of the filing fee. The Landlord’s Application for Dispute Resolution was made on July 5, 2018. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover the filing fee.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with 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 met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to the return of his security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

Both parties agreed that this tenancy began on October 1, 2014, and ended on April 25, 2018. They also agreed that the monthly rent was \$2,800.00 and was due on the first day of each month. Both parties also agreed that the Landlord currently holds a \$1,275.00 security deposit and a \$1,275.000 pet damage deposit (the “deposits”). Both the Tenant and the Landlord agreed that the move-in and move-out inspections had not been completed for this tenancy.

Both parties also agree that there was a previous hearing for this tenancy and that a Monetary Award was issued during that hearing that is still currently outstanding, in the amount of \$6,048.22. The previous hearing number was recorded on the style of cause page for this decision.

The Tenant testified that she had provided the Landlord with her written forwarding address twice; once on April 25, 2018, the day she moved out and again on May 7, 2018, on one of the documents contained in the service of her evidence package to the Landlord for the previous hearing. The Tenant provided a copy of the letter with her forwarding address into documentary evidence.

The Landlord testified that he had not received the Tenant’s forwarding address on April 25, 2018, and had not noticed the address in the Tenant evidence package that he received in early May 2018. The Landlord testified that he reviewed the Tenant’s evidence package, for the previous hearing, and now sees the copy of the written letter containing her forwarding address.

The Tenant testified that she is seeking the return of double her deposits as the Landlord had not received her written permission to keep her deposit and that the Landlord filed his claim against her deposits outside of the legislated timeline.

The Landlord testified that he kept the deposits in partial payment towards the Monetary Order he had been issued in the previous hearing.

The Landlord testified that he is claiming for \$890.40, in costs to replace and install a new sink in the bathroom that had been broken at the end of the tenancy. The Landlord testified that the Tenant broke the porcelain sink during her tenancy by dropping something into it and causing a chunk of the porcelain to break away. The Landlord has provided a copy of an invoice for the purchase of a new sink and a picture of the broken sink into documentary evidence.

The Tenant testified that the sink had cracked, and a chunk of the porcelain had broken off in early November 2017 and that she had reported it to the Landlord immediately. The Tenant testified that one of the faucet taps on the sink had broken off and that when it fell into the sink, it cracked the porcelain and caused the chunk to break off. The Tenant testified that she did not damage the sink, that the faucet tap had been broken from the beginning of tenancy and that it had broken off in her hand when she went to use it.

The Tenant also testified that she attempted to work with the Landlord from November 2017 until April 2018, when she moved out, to have him fix the sink but that the Landlord had never repaired or maintained the rental unit during her tenancy. The Tenant submitted two pages of an email string between her and the Landlord, where she was requesting repairs to the rental unit and two pictures of the broken faucet tap into documentary evidence.

The Landlord is also claiming to recover \$434.33 in skip tracing fees. The Landlord testified that he had to hire a company to locate the Tenant for service of the Order from the previous hearing. The Landlord testified that he had to hire this company as the Tenant had not provided him with her forwarding address for service of legal documents. The Landlord submitted two copies of invoices into documentary evidence.

The Tenant testified that she had provided the Landlord with her forward address twice and that the Landlord did not need to hire this company to find her. The Tenant testified that the Landlord had her forwarding address and she should not have to pay for this service as the service was not required.

The Landlord testified that he had not noticed the Tenant's forwarding address in the evidence package he had received for the previous hearing.

Both the Landlord and the Tenant agree that the Tenant owes the Landlord \$746.03 for an outstanding hearing bill that the Landlord paid. The Landlord submitted an email from the utility company into documentary evidence, as evidence he had paid the bill.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties that this tenancy ended in accordance with the *Act* on April 25, 2018. I also accept the testimony of both parties that the Landlord did not conduct the move-in or move-out inspection for this tenancy.

The move-in/move-out inspection is an official document that represents the condition of the rental unit at the beginning and the end of a tenancy, and it is required that this document is completed in the presence of both parties. In the absence of that document, I must rely on verbal testimony regarding the condition of the rental unit at the beginning and the end of the tenancy.

Pursuant to section 23 and 35 of the *Act*, it is the responsibility of the Landlord to ensure that the inspections for a tenancy are completed as required. I find that the Landlord was in breach of sections 23 and 35 of the *Act* by not completing the inspections as required.

Consequences for tenant and landlord if report requirements not met

- 36** (2) Unless the tenant has abandoned the rental unit, the right of the 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 35 (2) [*2 opportunities for inspection*],
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequently, pursuant to section 36 (2) of the *Act*, I find that by not completing the move-out inspection the Landlord has extinguished his right to make a claim against the security deposit for the damages to the rental unit. However, I acknowledge that the

Landlord did receive a Monetary Order in a previous hearing and I accept the testimony of both parties that this Monetary Order had not been paid and was still outstanding as of the date of this hearing.

Return of security deposit and pet damage deposit

38 (3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

Pursuant to section 38(3) of the Act, I find that the Landlord was within his rights to retain the deposits for this tenancy as partial payment toward his award from the previous hearing. Therefore, I dismiss the Tenant's claim for the return of her security and pet damage deposits.

As for the Landlord's claim for the costs for replacing and installing the bathroom sink. In the absence of a move-in/move-out inspection, I must rely on the testimony of the parties to determine the condition of the rental unit at the beginning and end of the tenancy. In this case, I find that the parties offered conflicting verbal testimony regarding the condition of the sink at the beginning of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have carefully reviewed the documentary evidence provided into evidence by both parties, and I find that there is insufficient evidence before me to prove the condition of the sink and faucet tap at the beginning of this tenancy. Therefore, I dismiss the Landlord's claim for the recovery of his costs for a new sink.

As for the Landlord claim for \$434.33 for skip tracing services to locate the Tenant after the tenancy had ended in order to serve legal documents. I accept the testimony of both parties that the Tenant had served the Landlord with her written forward address as of May 15, 2018, the date of their previous hearing. I find that the Tenant had provided the Landlord with her forwarding address and that the Tenant was not trying to hide from the Landlord or avoid service of legal documents. I find that the skip tracing services purchased by the Landlord were not required. Therefore, I dismiss the Landlord claim for the recovery of his costs to locate the Tenant.

I accept the agreed upon testimony of both parties that the Tenant owes the Landlord \$746.03 for an outstanding heating bill, that was due at the end of this tenancy. I award the Landlord a monetary order for the recovery of his cost for the heating bill, in the amount of \$746.03.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application.

Conclusion

I grant the Landlord a Monetary Order in the amount of \$846.03. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant 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: November 16, 2018

Residential Tenancy Branch