



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 27, 2018 (the "Application"). The Landlord applied for compensation for damage to the unit, for compensation for monetary loss or other money owed, to keep the security deposit and for reimbursement for the filing fee.

The Agent appeared at the hearing for the Landlord. The Tenant appeared at the hearing. I explained the hearing process to the parties and answered their questions. The parties provided affirmed testimony.

The Tenant confirmed he wanted double the security deposit back if I found the Landlord breached the *Residential Tenancy Act* (the "Act") or *Residential Tenancy Regulation* (the "Regulations").

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant confirmed he received the hearing package and Landlord's evidence.

The Agent advised that she did not receive the Tenant's evidence. The Tenant advised that he did not serve the evidence on the Landlord. The Tenant had submitted photos and a text message from the Agent. The Agent did not take issue with admission of the evidence.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

1. \$315.82 for bed linens;
2. \$27.99 for pillow cases; and
3. \$240.00 for cleaning, shopping and repairs.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started March 1, 2018 and was for a fixed term ending August 31, 2018. Rent was \$2,100.00 per month. The Tenant paid a \$1,050.00 security deposit.

The parties agreed the tenancy ended August 31, 2018.

The Agent testified that \$466.19 of the security deposit was e-transferred to the Tenant September 17, 2018 but was not accepted. She confirmed the Landlord currently holds the entire security deposit. The Tenant testified that on September 18, 2018 he wrote the Agent advising the amount returned was incorrect and that he sought the full deposit.

The Tenant testified that he provided his forwarding address to the Landlord August 24th or 25th. He said he wrote this on the back of a business card and gave it to the Landlord. The Agent testified that she had no knowledge of this. She said she received the Tenant's forwarding address in a text September 17th.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Agent testified that her and the Tenant did a walk-through of the rental unit upon move-in but did not complete a Condition Inspection Report. The Tenant testified that he does not recall doing an official inspection.

The Agent testified that no move-out inspection was done because the Tenant moved out August 24th and gave short notice of his departure. The Agent testified that the Tenant gave notice August 9th and advised on August 16th that he was leaving August 24th. The Agent confirmed the Tenant was not offered two opportunities to do a move-out inspection. The Agent advised that a Condition Inspection Report was not completed.

\$315.82 for bed linens and \$27.99 for pillow cases

The Agent testified that the Tenant failed to comply with the *Act* by not leaving the bed linens clean upon move-out. She pointed to photos showing staining on the bed linens. The Agent advised that the amount requested is the amount it cost to replace the bed linens. She said replacement was necessary given how soiled the linens were. The Agent advised that she did not try to wash the linens.

The Tenant did not dispute that the linens were stained. He testified that this was from sunscreen and would have come out if they had been washed. The Tenant testified that his friend and neighbour offered to wash the linens but when his friend went to the apartment the Agent and cleaner were there and sent him away. He said the staining would have come out if he had been given a chance to clean them.

In reply, the Agent testified that the Tenant only said his friend “may” be able to address the outstanding issues with the rental unit. She denied she sent him away and said he did not offer to do anything.

\$240.00 for cleaning, shopping and repairs

The Agent testified that a cleaner was hired to clean the rental unit and that it took five hours at \$30.00 per hour. She said she also assisted with the cleaning.

The Agent sought \$90.00 for the time it took her to purchase the bed linens, assist in cleaning the rental unit and put together a shelf that the Tenant had taken apart. She said there was food in the fridge and recycling that had to be taken down.

The Agent testified that the following tenant was moving into town on a deadline. She said the Tenant had left the city and there was no assurance of an intention to thoroughly clean the rental unit.

The Tenant testified that the work done by the cleaner and Agent were done without his knowledge or approval. He testified that the Agent and cleaner were already in the rental unit when his friend went over there. The Tenant testified that the rental unit was still his and that he had a right to have someone attend it and address the remaining issues. The Tenant testified that he did provide one set of keys to the Agent but kept a second set and told the Agent he wanted to keep the key in case he wanted access to the rental unit prior to the end of the tenancy. He said he left food in the fridge because his friend was going to take it home. The Tenant testified that the recycling would have been easy for his friend to do.

The Tenant testified that he sent a text to the Agent on August 24th stating that he ran out of time and did not finish cleaning but that he was going to ask his friend for help and his friend may be able to take care of the final cleaning.

The Agent acknowledged receiving the August 24th text.

Analysis

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Regulations*.

Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties in relation to a move-in inspection, I am satisfied this is not a situation where the Tenant was offered opportunities to do an inspection but failed to participate. Therefore, the Tenant did not extinguish his rights in relation to the security deposit under section 24 of the *Act*.

Given the testimony of the Agent that no move-in Condition Inspection Report was done, I find the Landlord did extinguish his right to claim against the security deposit for damage to the rental unit under section 24 of the *Act*.

There was no issue that this tenancy ended August 31, 2018.

I accept that the Tenant provided the Landlord with his forwarding address on August 24th or 25th. The Agent did not know if this occurred. I do not find this the same as disputing that it occurred. I find this is information the Agent should have looked into with the Landlord prior to the hearing. This is the Landlord's Application and his onus to prove pursuant to rule 6.6 of the Rules of Procedure. A key issue in this type of application is when the Landlord received the Tenant's forwarding address. The Agent should have been prepared to speak to this issue or had the Landlord attend to speak to this issue. There was nothing about the testimony of the Tenant during the hearing that caused me to question his reliability or credibility. In the circumstances, I accept the Tenant's testimony on this point.

Given the above, August 31, 2018 is the relevant date for the purposes of section 38(1) of the *Act*. Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of August 31, 2018. However, the Landlord had extinguished his right to claim against the security deposit for damage and therefore his only option under section 38(1) of the *Act* was to repay the deposit in full or claim against it for something other than damage to the rental unit. Based on the testimony of the parties, I find the Landlord did neither. Therefore, I find the Landlord breached section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the security deposit and must pay the Tenant double the amount of the deposit. Therefore, the Landlord must return \$2,100.00 to the Tenant.

I note that the doubling would have occurred regardless of whether the Landlord received the Tenant's forwarding address in August or September given the Landlord had extinguished his right to claim against the security deposit for damage.

The Landlord is still entitled to claim for compensation and I consider that now.

Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

The parties agreed the tenancy did not end until August 31, 2018. The rental unit was in possession of the Tenant up until this point. I acknowledge that he left the city, but this does not change the legal aspects of the tenancy. The Tenant had a right to enter the rental unit up until August 31, 2018.

Further, the Tenant had until the end of the tenancy to ensure the issues raised were dealt with. The Tenant should have been given the opportunity to have his friend attend and deal with the remaining issues in the rental unit. I am satisfied the Tenant was not provided this opportunity given the Agent and cleaner were already in the rental unit when the Tenant's friend attended.

I acknowledge the Landlord had a new tenant arriving from out of town immediately after this tenancy ended. This does not change the legal aspects of the tenancy. It may not have been practical to wait until August 31, 2018 to see if the Tenant had arranged for someone to clean the rental unit, but this is what was required.

In the circumstances, I am not satisfied the Tenant breached the *Act* given he had until the end of the tenancy to address the issues raised. I decline to award the Landlord the compensation sought.

Given the Landlord was not successful in this application, I decline to grant the Landlord reimbursement for the filing fee.

In summary, the Landlord must pay the Tenant \$2,100.00. The Tenant is issued a Monetary Order in this amount.

Conclusion

The Application is dismissed without leave to re-apply. The Landlord must return \$2,100.00 to the Tenant. The Tenant is issued a Monetary Order in this amount. If the Landlord does not return \$2,100.00 to the Tenant, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 08, 2019

Residential Tenancy Branch