



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF / MNR MNDC MNSD

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for compensation for loss or damage pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony, to present evidence and to make submissions. The parties confirmed service of the respective applications and evidence on file.

The landlord stated that he has not received any evidence in support of the tenant’s claim for compensation for loss and to recover cost of emergency repairs. The tenant acknowledged that he did not submit any evidence for this part of his claim and advised during the hearing that he was withdrawing these portions of his claim.

Issues

Is the landlord entitled to a monetary award for compensation for loss or damage?
Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?
Is the landlord entitled to recover the filing fee for this application from the tenant?
Are the tenants entitled to a return of all or a portion of the security deposit, including double the amount?

Background & Evidence

The tenancy for this basement suite began on September 1, 2018 with a monthly rent of \$1250.00 payable on the 1st day of each month. The landlord's resides in the upper portion of the home. The tenancy ended on October 2, 2018. The tenant paid a security deposit of \$625.00 at the start of the tenancy which the landlord continues to hold. The tenant provided a forwarding address to the landlord in writing on October 15, 2018. The landlord's application to retain the security deposit was filed on October 29, 2018 within the 15 day time period after receiving a forwarding address as required under the Act. There were not any move-in or move-out condition inspection reports completed.

The landlord is claiming \$1250.00 as loss of rent for October 2018. The landlord testified that the tenants provided 2 days' notice before vacating on October 2, 2018. The landlord testified he was not able to rent the suite again until November 1, 2018. The landlord submitted a copy of the tenancy agreement entered into with the new tenant in support.

The landlord is claiming \$600.00 for re-painting work required in two bedrooms. The landlord testified the tenants children scribbled all over the walls with non-removable markers. The landlord testified he attempted to wash the walls without success. The landlord submitted several pictures of various scribble marks on the walls.

The landlord is claiming \$150.00 to repair a broken stove knob and one burner that is not working. The landlord testified that all burners were working at the beginning of the tenancy.

The landlord is claiming \$500.00 for replacement of a bathroom toilet. The landlord testified that the toilet seat and lid was cracked. The landlord testified that the toilet was not cracked at the start of the tenancy.

The landlord submitted an invoice for all of the above repair work. The landlord testified that he has not yet had the repair work done as he cannot afford to do it. The landlord

testified that the estimate was provided by a renovation company who does all types of renovation work. The estimate includes supplies, parts and labour.

The tenant testified that on September 28, 2018 the landlord shouted at him and insulted him and asked him to move out. The tenant submits he had to find a new house on short notice out of fear for safety and security of his family.

The tenant testified that at the beginning of the tenancy the landlord told him that the unit was painted two years ago. The tenant testified that if his kids did mark the walls it would have been with simple crayons which should have washed off.

The tenant testified that on September 9, 2018 he was the one that contacted the landlord to advise the stove burner was not working due to a power surge. The tenant testified that the landlord told him to have it fixed himself and that he would be reimbursed.

The tenant testified that the toilet was very old and it was in that cracked condition at the beginning of the tenancy.

In reply, the landlord testified that the shouting incident was in regards to the tenant blocking in the landlord's vehicle on the driveway. The landlord testified that this was the third time the tenant had done this even though parking was not included in his tenancy agreement. The landlord testified that he told the tenant to find a rental unit that provides driveway parking if that is what he needs.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I accept the landlord's claim for loss of rent for October 2018. The tenant ended the tenancy without proper 30 day written notice as required under the Act. I reject the tenant's argument that the landlord ended the tenancy by shouting at him. Even if the landlord suggested to the tenant that he find alternative accommodation this not does not constitute a legal notice to end tenancy nor a mutual agreement to end tenancy. The landlord is awarded **\$1250.00**.

I accept the landlord's testimony and evidence in support of the claim for loss resulting from the damage caused by scribbling on the walls. The tenant acknowledged that this could have been caused by his kids. I find the pictures submitted by the landlord support that there is extensive damage which would require re-painting. I find this damage was beyond normal wear and tear. However, as the landlord has only provided an estimate and has not actually incurred the expense to support the actual amount of loss, I am not inclined to award the landlord the full amount claimed. Further, Residential Tenancy Policy Guideline 40, Useful Life of Building Elements, provides that paint has a useful life of 5 years. As the unit had been painted only 2 years ago, the paint only had 3 years of useful life remaining. As the landlord's actual loss is difficult to quantify as the repair work has not been performed, I award the landlord the nominal amount of **\$200.00**.

The landlord claims for loss due to damage to the stove or toilet are dismissed. The landlord did not complete any move-in or move-out condition inspection reports or provide any pictures to support the condition of these items at the beginning of the tenancy. I find there is insufficient evidence that these items were damaged due the actions or neglect of the tenant. Appliances can stop working for various reasons and it is normally the landlord's responsibility to repair and maintain appliances that are provided with the tenancy.

As the landlord was successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application from the tenant.

The landlord continues to hold a security deposit in the amount of \$625.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Total entitlement for Landlord: \$925.00 (\$1250.00 + \$200.00 + \$100.00 – \$625.00)

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later.

I find the landlord filed an application to retain the tenants' security deposit within fifteen days of receipt of a forwarding address; therefore, the tenants' application for double the security deposit is dismissed. As the landlord has been permitted to retain the tenants' security deposit in partial satisfaction of the monetary award granted to the landlord, the tenants' claim for return of the security deposit is also dismissed.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$925.00**. 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: February 22, 2019

Residential Tenancy Branch