



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD, FFL, MNDL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for loss or damage from this tenancy?
Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is either party entitled to recover the filing fee for their application?

Background, Evidence

Both parties confirmed that the tenancy began on February 1, 2010 and ended on December 1, 2018. The monthly rent was \$1300.00 due on the first of each month. The tenant paid a security deposit of \$640.00 which the landlord still holds. Written condition inspection reports were not conducted at move in or move out.

The tenant testified that she believes she should be entitled to the return of double her security deposit and the recovery of the filing fee as the landlord did not return the deposit within fifteen days of the tenancy ending. The tenant confirmed that she filed for dispute resolution on January 4, 2019. The tenant testified that she provided her forwarding address to the landlord on "January 10 or January 12, 2019". The tenant testified that she disputes the landlords claim. The tenant testified that she agrees that she should be responsible for \$250.00 worth of damage and not what the landlord is seeking.

The landlord's testimony is as follows. The landlord testified that the tenant left the unit dirty and with some damage. The landlord testified that she painted a room without permission. The landlord testified that she damaged some walls, doors, chipped the enamel off of the stove top, left the stove dirty and didn't return all the keys. The landlord testified that he is charging the tenant for his labour of about 8.5 hours at a rate of \$30.00 per hour which is far less than a professional company. The landlord is seeking \$552.36 plus the \$100.00 filing fee.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*. However, the tenant filed for dispute resolution on January 4, 2019 without providing her forwarding address in writing to the landlord first, in the result; the doubling provision is not triggered as the landlord was not given an opportunity to either return it or file an application as outlined below.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the above, the tenant is not entitled to the return of double the deposit. I will address the final outcome of the deposit later in this decision.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord **failed to provide sufficient evidence** to show the changes in the condition of the unit, that the tenant caused the damage, what the actual costs of those damages are and the loss incurred, accordingly I dismiss this portion of the landlords claim. However, based on the tenant acknowledging that she was responsible for a portion of that claim and stating that the amount should be \$250.00, I hereby grant the landlord \$250.00.

As neither party was completely successful in their application, I decline to award the recovery of the filing fee to either party and they must each bear the cost of their own filing fee.

Conclusion

I order that the landlord retain \$250.00 from the security deposit in full satisfaction of the claim. The landlord is to return the remaining \$390.00 of the deposit to the tenant. I grant the tenant an order under section 67 for the balance due of \$390.00. This order may be filed in the Small Claims 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: April 29, 2019

Residential Tenancy Branch