



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNDC, MNR, MNSD, 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 cleaning, repairs and for the filing fee. The landlord also applied to retain the security and pet deposits in partial satisfaction of his monetary claim. The tenant applied for a monetary order for the return of double the deposits, for compensation pursuant to a s.49 notice to end tenancy and for the loss of quiet enjoyment and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The 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*.

Preliminary Matters

The tenant made this application on April 03, 2019 for a monetary order as compensation for the loss of quiet enjoyment. In his written submission, the landlord informed me that the tenant had made prior application for the same claim and the hearing took place on March 25, 2019. Upon review of that decision, dated March 25, 2019, I find that the tenant's application for compensation for the loss of quiet enjoyment was heard and the Arbitrator dismissed the application without leave to reapply. Accordingly, the tenant's claim for compensation for the loss of quiet enjoyment was not dealt with during this hearing.

On June 03, 2019, the tenant amended his application to include compensation pursuant to a s.49 notice to end tenancy and for the return of double the deposits. This hearing dealt with the tenant's amended claim.

Issues to be decided

Is the landlord entitled to a monetary order for the cost of cleaning, repairs and for the filing fee? Is the tenant entitled to the return of double deposits, to compensation pursuant to a s.49 notice to end tenancy and to the recovery of the filing fee?

Background and Evidence

The parties agreed that the tenancy started on September 01, 2014 and ended on March 26, 2019 pursuant to a notice to end tenancy for landlord's use of property. The monthly rent was \$880.00 and prior to moving in the tenant paid a security deposit of \$425.00 and a pet deposit of \$215.00. The rental unit consists of a suite located on the lower level of the landlord's home. The landlord lives upstairs. The landlord agreed that he was in possession of the tenant's deposits in the total amount of \$640.00.

A move in inspection was conducted September 01, 2014 and a move out inspection was conducted on March 31, 2019. The landlord filed copies of the inspection reports into evidence.

On January 29, 2019, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The reason for the notice was that the landlord's parents intended to move into the rental unit. The tenant initially disputed the notice but later decided to move out and therefore withdrew his application to dispute the notice. The tenant agreed that he had received the last month of rent-free stay.

The tenant stated that he gave the landlord his forwarding address on April 03, 2019 with a request for the return of the deposits. The landlord made his application for damages against the deposits in a timely manner on April 12, 2019.

The tenant stated that as of April 03, 2019, when he made the application, the landlord's parents had not moved into the rental unit. The tenant also added that the rental unit was vacant as of the date of this hearing. The landlord responded by saying that he was in the process of repairing and cleaning the rental unit.

The landlord testified that the tenant made a complaint against him to the Department of Technical Safety and on April 02, 2019 an inspector conducted an inspection of the rental unit. The landlord was provided with a report of the inspection and a list of recommended remedial repairs.

The hot water tank was found to be located too close to a panel and had to be relocated. The landlord was required to install two plug points in the bedroom and safety light switches in the bathroom.

On May 21, 2019 a licensed electrical inspector conducted a follow up inspection and found everything to be in order. The landlord stated that since then he has been working on the rental unit for a few hours per day as he is employed full time. The landlord stated that the unit required a lot of cleaning and he provided photographs to support his testimony regarding the condition of the unit after the tenancy ended.

The landlord stated that his parents visited the unit and asked him to make certain changes to the unit before they would move in. The landlord stated that he has painted most of the unit, has ripped out the flooring and replaced it, has fixed the blinds and done other repairs. The landlord stated that he still has the remainder of painting to do and has to replace baseboard in the bathroom and hallway. The landlord estimated that the unit will be ready for his parents to move in by the end of July 2019.

The landlord stated that the entry door was damaged and the melamine on the front of a kitchen cabinet door had melted due to misuse of the oven by the tenant. The landlord stated that the tenant would leave the oven door open while the oven was on and this caused the melamine front of a cabinet door to melt. The landlord provided photographs of the damage.

The tenant denied having caused damage to the entry door and denied leaving the oven door open while the oven was on.

The landlord is claiming the following:

1.	48 hours of cleaning	\$612.00
2.	Cleaning supplies	\$45.85
3.	Entry door and cabinet fronts	\$563.64
4.	Filing fee	\$100.00
	Total	\$1,321.49

The tenant stated that he had given the landlord his forwarding address on April 03, 2019 but the landlord did not return the deposits within 15 days of the receipt of the forwarding address. The tenant stated that he believed that since the landlord has not returned the deposits, he is now entitled to the return of double the deposits.

The tenant also stated that he was informed by an information officer that if the landlord's parents did not move in into the rental unit by May 01, 2019, then the landlord must pay the tenant compensation in the amount of 12 months' rent. The tenant

submitted that as of the date of this hearing the landlord's parents had not yet moved into the rental unit.

The tenant is claiming the following:

1.	Double the security and pet deposits	\$1,280.00
2.	s. 49 Compensation	\$10,560.00
3.	Filing fee	\$100.00
	Total	\$11,940.00

Analysis

Landlord's application:

1. 48 hours of cleaning – 612.00
2. Cleaning supplies - \$45.85

Residential Tenancy Policy Guideline #1 addresses a tenant's responsibility to clean the residential premises. The Guideline states that an arbitrator may determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

In this case, I find that the tenant left the unit in a reasonably clean condition but did not fully clean certain areas of the rental unit which are depicted in the landlord's photographs. The rental unit is 800 square feet in area. The landlord filed photographs of the condition of the unit at the end of tenancy. While the unit appears to be in need of some cleaning, I find that the landlord's claim of 48 hours to clean a fairly clean 800 square foot unit is excessive.

I find it appropriate to award the landlord \$150.00 towards the cost of cleaning the rental unit and cleaning supplies.

3. Entry door and cabinet fronts - \$553.64

The move in inspection indicated that there were dents in the front door. The landlord submitted that there were additional dents on the door at the end of tenancy.

The tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit. I find that the additional dents to the door are a result of reasonable wear and tear.

The landlord denied misuse of the oven. The melamine on the cabinet door front closest to the oven shows some melting in the photographs filed into evidence by the landlord. Given the proximity of the cabinet to the oven, it is possible that the melamine on the door front is not heat resistant and may have melted from the heat of oven use.

Based on the above, I find that the tenant is not responsible for the cost of replacing the front door or the cabinet door front. Accordingly, the landlord's claim for \$563.64 is dismissed.

4. Filing fee - \$100.00

Since the landlord has proven a relatively small portion of his claim, I award the landlord \$50.00 towards the recovery of the filing fee.

Overall the landlord has established a claim of \$200.00.

Tenant's application:

1. Double the security and pet deposits - \$1,280.00

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to the recovery of double the amount of the deposit.

The tenancy ended on March 26, 2019 and the landlord is deemed to have received the tenant's forwarding address on April 03, 2019.

The landlord made application to keep the deposits in partial satisfaction of his claim within a timely manner, on April 12, 2019. Therefore, I find that the tenant is not entitled to the return of double the deposits. However the tenant is entitled to the return of \$640.00 which is the total amount of the security deposit plus pet deposit that is currently held by the landlord.

2. Compensation pursuant to a s. 49 notice - \$10,560.00

Pursuant to Section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property is entitled to receive from the landlord the equivalent of one month's rent payable under the tenancy agreement. In addition to the amount payable under subsection (1), if

- (a) Steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) The rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord as applicable under section 49, must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the reason for the notice was that the landlord or a close family member intended to move into the rental unit. The effective date of the notice was March 31, 2019.

Based on the testimony and the documents filed into evidence, I find that the landlord was ordered to make electrical changes to the rental unit and these changes were approved by the electrical inspector of the Department of Technical Safety on May 21, 2019. The landlord stated that since then he has been carrying out renovations which will be done by the end of July 2019, after which time his parents will move in.

I find that the tenant has made a premature application for compensation as according to legislation the landlord is required to take steps to accomplish the stated purpose for ending the tenancy within a reasonable time. As of the date of the hearing, the landlord was still in the process of restoring the unit in preparation for his parents to move in. I find that the landlord's parents are scheduled to move in by the end of July 2019 and if this is not accomplished, then the tenant is at liberty to make application for the applicable compensation. The tenant's application for \$10,560.00 is dismissed with leave to reapply.

3. Filing fee - \$100.00

Since the tenant has not proven his claim, he must bear the cost of filing his application.

Overall the landlord has established a claim of \$200.00. I order that the landlord retain this amount from the security and pet deposits of \$640.00 and return the balance of \$440.00 to the tenant. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$440.00. 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 **\$440.00**.

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: June 25, 2019

Residential Tenancy Branch