



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL; MNDCT, MNSD

Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the tenant's security deposit, pursuant to section 38.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 105 minutes. The landlord spoke for the majority of the hearing time.

The hearing began at 1:30 p.m. with me and the tenant present. The landlord called in late at 1:32 p.m. I notified the landlord about what occurred in his absence before he called into the hearing. The hearing ended at 3:15 p.m.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord claimed that he did not receive any of the tenant's digital recording evidence. The tenant stated that he provided a copy to the landlord by way of registered mail. He claimed that he did not provide an RTB "digital evidence details" form outlining the contents and time stamps of the recordings. He stated that he did not check to see whether the landlord had playback equipment and could hear and see the evidence. I notified both parties that I could not consider the tenant's digital evidence at this hearing or in my decision because he did not comply with Rule 3.10.5 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* in ensuring that the landlord had playback equipment and could see and hear the evidence, nor did he provide the required "digital evidence details" form.

Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the landlord interrupted, talked at the same time and argued with me and the tenant. I cautioned the landlord multiple times to stop interrupting and to allow me and the tenant to speak. I notified the landlord that my role as an Arbitrator required me to maintain control of the conference, ensure that only one person was speaking at a time, and confirm that all parties provide testimony when it is their turn to speak. I asked the landlord to allow me to speak so that I could effectively conduct the hearing. I notified him that I would give him a chance to speak and present his case, as well as respond to questions.

The hearing took longer because of the disruptive behaviour of the landlord. Despite the landlord's behaviour, I allowed him to attend the full hearing, in order to provide him with a full opportunity to present his application and respond to the tenant's application.

I caution the landlord to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the tenant entitled to obtain a return of his security deposit?

Is the landlord entitled to recover the filing fee for his application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 15, 2017. Monthly rent in the amount of \$2,900.00 was payable on the first day of each month. A security deposit of \$1,450.00 was paid by the tenant and the landlord continues to retain \$1,350.00 as he was ordered by a different Arbitrator to keep \$100.00 from the deposit, in a previous RTB hearing on January 15, 2019. The file numbers for that hearing appear on the front page of this decision. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The landlord did not have any written permission to keep any part of the tenant's security deposit. The landlord's application to retain the tenant's security deposit was made on March 4, 2019.

The tenant stated that he vacated the rental unit on February 2, 2019, while the landlord claimed that it was on February 6, 2019. The landlord claimed that the tenant provided a written forwarding address by way of a text message, which the landlord received sometime in February or March 2019. The tenant stated that he provided his written forwarding address on March 1, 2019, by way of his application for dispute resolution.

The landlord seeks a monetary order of \$7,458.50 plus the \$100.00 application filing fee. The tenant disputes the landlord's application. The landlord seeks \$2,900.00 for December 2018 unpaid rent, \$2,900.00 for February 2019 loss of rent, and \$1,658.50 for painting in the master bedroom and bathroom. The landlord provided an invoice for the painting cost, with a note that it was paid with a reference number. He stated that the tenant was smoking in the bedroom, that prospective tenants complained about the smell and did not want to rent the unit, but chose to do so after it was repainted. The landlord provided a letter from the new tenant regarding the above. The tenant disputed that he smoked in the rental unit, except for one time in April 2018, when he said he ran into the bathroom from the balcony, with a cigarette, to answer a phone call.

The tenant seeks a monetary order of \$2,403.51. The landlord disputes the tenant's application. The tenant seeks the return of the remainder of his security deposit of \$1,350.00, claiming that he agrees the landlord was entitled to keep \$100.00 from the deposit from the previous RTB hearing Arbitrator's order. The tenant seeks \$515.00 in cleaning fees, \$281.26 for moving truck expenses, and \$257.25 for garbage disposal fees. The tenant provided invoices for the above costs, except he only provided one invoice of \$140.63 for the moving truck, not two invoices for \$140.63 each.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim on a balance of probabilities. In this case, to prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

Loss of Rent

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I dismiss the landlord's claim for unpaid rent of \$2,900.00 for December 2018. The tenant disputed this cost. The tenant provided a copy of a certified cheque, dated December 1, 2018, that was endorsed as cashed on the back of the cheque. The certified cheque, dated December 1, 2018, is for \$2,900.00, in the name of the landlord. The landlord claimed that the tenant forged this signature and endorsed the cheque himself, failing to provide a copy of his bank records to show that the money left his account. I find that the tenant provided sufficient evidence that he gave a certified cheque payable to the landlord for December 2018 rent of \$2,900.00, that was endorsed. I do not find that the tenant is required to provide his bank records to show that the money left his account, as he could have paid this amount using any method, including by cash which may not have come from his bank account.

I dismiss the landlord's claim for a loss of rent of \$2,900.00 for February 2019. The tenant disputed this cost. I find that the landlord and tenant made an agreement that the tenant did not have to pay for this rent and could move out in February 2019. The landlord testified that he told the tenant at the end of January 2019, around January 28 or 29, that he could move out two to three days later in February 2019, and he would not charge him for February 2019 rent. The landlord also confirmed that when the tenant gave the keys back for the unit, he also said again that the tenant did not have to pay the rent for February 2019. The tenant confirmed this agreement. The landlord said that he only claimed for it because the tenant filed an RTB application against him at this hearing. He later claimed that it was because he had to clean, take out garbage, and paint, which took a month. I find that the parties made an agreement and the landlord cannot revoke it because he is upset that the tenant filed an RTB application against him, which the tenant has the legal right to do so.

Painting

I dismiss the landlord's application for \$1,658.50 to repaint the master bedroom and bathroom in the rental unit. The tenant disputed this cost. I find that the landlord's invoice does not add up correctly for the work that was completed. It indicates that painting and materials were charged at \$700.00 and \$850.00 which totals \$1,550.00. Yet, the total of the invoice balance at the bottom of the invoice was \$1,658.50. When I asked the landlord about this discrepancy he began guessing that the painter did not include GST or PST or materials.

When I informed the landlord that the numbers still did not add up with the GST and PST, he began sending text messages to the painter during the hearing, to get an explanation. The landlord then claimed that the painter forgot to include \$30.00 in materials and 5% tax to the invoice, which accounted for the difference above.

I do not accept the landlord's invoice for painting, as the landlord did not call the painter as a witness to testify about his incorrect invoice. Further, the missing amounts were not included on the invoice prior to the hearing, in order to give the tenant notice as to the proper amounts being claimed by the landlord.

Since the landlord was unsuccessful in his application, I find that he is not entitled to recover the \$100.00 application filing fee from the tenant.

Tenants' Application

Garbage Disposal, Moving Costs, and Cleaning

I dismiss the tenant's application for garbage disposal fees of \$257.25. The landlord disputed this cost. I find that tenant provided insufficient evidence that the landlord added his own garbage to the tenant's pile of garbage and the company charged the tenant more for the disposal. The tenant said that the company told him the load was heavier than expected, but I find that this does not show that it was the landlord's garbage in the tenant's pile. I also reject the tenant's argument that because the garbage was in front of the rental unit, only the landlord, no one else, could have added to it. I also find that the tenant's invoice does not show that there was an extra cost beyond the tenant's garbage amount, as no breakdown was given.

I dismiss the tenant's application for \$281.26 for moving truck fees. The landlord disputed this cost. The tenant only provided one invoice for payment of \$140.63, not for the other cost he claimed he paid for \$140.63. I reject the tenant's argument that the landlord brought so many people to view the rental unit in order to re-rent it, that it blocked the tenant's moving truck and it took longer for the tenant to move out. The landlord claimed that he only had two to three showings and the tenant claimed that it was three showings per day from January 28 to February 2, 2019. Regardless, I do not find either number to be an onerous amount. The landlord has a right to show the unit in order to re-rent it to minimize his loss, and the tenant is required to provide access to the landlord when proper notice is given.

I dismiss the tenant's application for \$515.00 in cleaning fees. The landlord disputed this cost. The tenant is required to clean the rental unit throughout the tenancy and prior to vacating as per section 32 of the *Act* and Residential Tenancy Policy Guideline 1. This is the tenant's cost to bear, not the landlord's cost.

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on in early February 2019. The tenant provided the landlord with a forwarding address on March 1, 2019, which was received by the landlord. I find that although text messaging is not permitted under section 88 of the *Act*, the landlord was sufficiently served as per section 71(2)(c) of the *Act*, with the tenant's address by way of text message, as the landlord confirmed that he used this address to serve the tenant with evidence for this hearing.

The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the \$1,350.00 deposit to the tenant. I find that the landlord filed an application for dispute resolution to claim against the deposit on March 4, 2019, which is within 15 days of the forwarding address being provided on March 1, 2019.

The landlord continues to hold the tenant's security deposit of \$1,350.00. Over the period of this tenancy, no interest is payable on the deposit. Accordingly, I find that the tenant is not entitled to double the value of his security deposit, only the regular return of \$1,350.00, as the \$100.00 was legally deducted as per the previous Arbitrator's order at the previous RTB hearing. I order the landlord to return the \$1,350.00 to the tenant and I provide the tenant with a monetary order for same.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$1,350.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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.

The remainder of the tenant's application is dismissed without leave to reapply.

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 11, 2019

Residential Tenancy Branch