



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages to the rental unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order for money owed or lost;
2. Return of double the security deposit and pet damage deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary and procedural matter

In this case, the tenant amended their application to include their 13 year old daughter as a tenant. However, the tenant's daughter is not a tenant under the tenancy agreement. The tenant's daughter is an occupant, which means the child has no

obligation under the Act, which is appropriate. I have removed the child from the style of cause.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to a monetary order for loss under the Act?

Is the tenant entitled to the return of double the security deposit or pet damage deposit?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on November 1, 2018 and was to expire on October 31, 2019. Rent in the amount of \$1,600.00 was payable on the first of each month. The tenant paid a security deposit of \$800.00 and a pet damage deposit of \$800.00. The tenancy ended on September 15, 2019.

The parties agreed a move-in and move-out condition inspection report was completed.

Tenant's application

Tenant claims as follows:

a.	Return of 50% of rent for six months	\$4,800.00
b.	Return of double the deposits	\$3,200.00
c.	Filing fee	\$ 100.00
	Total claimed	\$8,100.00

The tenant testified that during their tenancy that they notified the landlord on 22 occasions that the occupants next to their unit were smoking marihuana, inside and outside their rental unit. The tenant stated that the smell would come into their rental unit causing the loss of enjoyment.

The landlord denied that they received 22 complaints from the tenant. The landlord stated that they acknowledged that they had received maybe a handful. The landlord stated that they inspected the unit of which the tenant alleged were smoking marihuana and found no evidence of smoking in their unit. The landlord stated that they also sent the occupants of the complaints warning letters and had the strata issue a letter to the

entire complex. The landlord stated that there was no evidence to support the tenant's allegations.

The tenant testified that they gave the landlord their forwarding address on September 24, 2019. The tenant stated that they received their pet damage deposit on October 21, 2019 and the security deposit was not returned.

The landlord testified that they made their application claiming against the deposit on October 9, 2019, which was within the 15 days of the receiving the tenant's forwarding address. The landlord stated the pet damage deposit was also returned on October 9, 2019.

Landlord's application

The landlord claims as follows:

a.	Damages and cleaning	\$225.11
b.	Filing fee	\$100.00
	Total claimed	\$325.11

The landlord testified that the tenant had left wall stickers on 4 different areas of the rental unit. The landlord stated that they told the tenant they would charge them for the removal of the wall stickers only if the new renter wanted them removed. The landlord stated the new renter did not want the sticker and they paid to have them removed. The landlord testified that there was also some weather stripping added to a window which they had to pay to have removed. The landlord seeks to recover the cost to have these items removed in the amount of \$175.11. Filed in evidence is a copy of the invoice.

The landlord testified that the tenant did not clean the blinds or light fixtures and they paid the incoming tenant the amount of \$50.00 to clean these items as there was insufficient time to hire a cleaning company. The landlord seeks to recover the cost of cleaning in the amount of \$50.00.

The tenant acknowledged that they left wall stickers on the walls. The tenant stated that they were not told that there would be a cost to have them removed. The tenant denies they added window stripping on the window.

The tenant testified that they told the landlord to keep a \$100.00 for cleaning; however, there was only one blind and light fixture left dirty.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Tenant's application

I am not satisfied that the tenant has proven that they notified the landlord on 22 occasions that their neighbor was smoking marihuana and that the landlord failed to address the tenant's concerns. The tenant did not submit copies of the alleged emails, which would have been reasonable if they existed.

In this case, the evidence of the landlord was that they did receive several complaints from the tenant and found there was no evidence to support them. The landlord stated that they inspected the subject rental unit and found no evidence of marihuana use.

As the onus is on the tenant to prove a violation of the Act by the landlord, I find the tenant has not met the burden of proof. Therefore, I dismiss this portion of the tenant's claim.

The tenant provided the landlord with their forwarding address on September 24, 2019. The landlord made a claim against the security deposit on October 9, 2019 and returned the pet damage deposit on October 9, 2019. I find the landlord complied with the Act, and the doubling provisions under section 38(6) of the Act do not apply. Therefore, I dismiss the tenant's claim for double the return of the deposits.

Landlord's application

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case the tenant left wall stickers on the wall, which had to be removed. I find the tenant breached the Act, when they failed to remove the stickers from the walls.

I accept the evidence of the landlord that the tenant installed some form of weather stripping in the window. This was not in the move-in condition inspection report and it was noted in the move-out condition inspection report. The tenant agreed to the state of the rental unit in the move-out condition inspection report. Therefore, I find the landlord is entitled to recover the cost for removing the wall stickers and weather stripping in the amount of **\$175.11**.

The evidence of the tenant was that they told the landlord to keep the amount of \$100.00 for cleaning the blinds and light fixtures. The evidence of the landlord was that they are only requesting the amount of \$50.00. I find the tenant breached the Act, when they failed to clean the light fixture and blind. Therefore, I find the landlord is entitled to recover the cost they paid to have them cleaned in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim of **\$325.11** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the above amount (\$325.11) from the security deposit of **\$800.00** in full satisfaction of the claim. The balance of the tenant's security deposit of **\$474.89** must be returned to the tenant. The tenant is granted a monetary order pursuant to section 67 of the Act, should the landlord fail to return the balance due to the tenant.

Conclusion

The tenant's application is dismissed. The landlord is granted a monetary order and may keep a portion of the tenant's security deposit in full satisfaction of their claim. The tenant is granted a monetary order for the balance due of their security deposit.

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: November 14, 2019

Residential Tenancy Branch