



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC MNSD FF / 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.

Tenants:

- 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 affirmed testimony, to present evidence and to make submissions. The parties confirmed service of the respective applications and evidence on file.

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 began on June 1, 2018 with a previous landlord. The tenancy ended on August 2, 2019. The tenant paid a security deposit of \$800.00 at the start of the tenancy which the

landlord continues to hold. The landlord's application to retain the security deposit was filed on August 15, 2019 within the 15 day time period after the end of the tenancy as required under the Act.

A move-in condition inspection was not completed on original move-in date, but one took place on February 1, 2019. A move-out inspection was completed on August 2, 2019.

As agent for the landlord, N.S. represented the landlord in this hearing. N.S. testified his company was not involved in this tenancy until June 25, 2019.

The landlord is claiming loss amounting to \$866.88 for the replacement cost of a lawnmower and wardrobe. The landlord testified that both these items were in the rental unit at the start of the tenancy but missing at the end. The landlord acknowledged that neither of these items were referenced in the tenancy agreement or the move-in condition inspection. However, the landlord argues these items were included on the contract of purchase when the current landlord purchased the property.

The landlord testified the rental property included two units so the lawnmower was not assigned to one particular unit but belonged to the property as a whole. The landlord testified that in previous communication with the tenant, the tenant acknowledged the existence of the lawnmower but at the time stated he had disposed of it.

The landlord testified that he took pictures which show the wardrobe in the tenant's unit at the time of an inspection on June 27, 2019.

The landlord submitted receipts for the replacement cost of both items. The landlord testified the lawnmower was approximately 2 years old and the wardrobe 1.5 years old. The landlord also submitted what he referred to as "a cut and paste from an e-mail from the previous owner" which lists these items as being part of the rental property.

The tenant argues the tenancy agreement or move-in inspection report make no reference to these items. The tenant argues that the list of items submitted as evidence by the landlord is just an arbitrary list which doesn't appear to be part of a purchase contract. The tenant submits that this list which is supposedly a cut and paste of an e-mail does not contain any dates or indicate who the e-mail is to or from. The tenant argues the landlord has provided no proof of these items being in the rental unit. The tenant denies any knowledge of the items in question being provided by the landlord and testified that he purchased the wardrobe as there was no closet in the rental unit.

In his own application, the tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the end of the tenancy or the date the landlord received the tenants forwarding address in writing.

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.

Pursuant to section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline #16 “Compensation for Damage or Loss” provides the following guidance:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find the landlord has provided insufficient evidence that the alleged missing items were provided by the landlord at the start of the tenancy. There was no mention of these items in either the tenancy agreement or the move-in condition inspection completed on February 1, 2019, eight months after the actual move-in date. The landlord failed to submit a copy of the contract of purchase which allegedly listed these items. The “cut and paste email” submitted by the landlord is insufficient as it contains no information as to whom sent this e-mail or when it was sent. The landlord provided insufficient evidence of the tenant’s alleged acknowledgement of the existence of the lawnmower. Further, the landlord provided no evidence as to the original purchase or value of these items.

The landlord’s application for compensation for loss is dismissed without leave to reapply.

As the landlord was not successful in this application, I find that the landlord is entitled to recover the filing fee paid for this application from the tenant.

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.

The tenancy ended on August 2, 2019 and the landlord filed this application on August 15, 2019. I find the landlord filed an application to retain the tenants' security deposit within fifteen days of the end of the tenancy; therefore, the tenants' application for double the security deposit is dismissed.

As the landlord's application to retain the deposit has been dismissed, the landlord is ordered to return the tenant's security deposit in the full amount of \$800.00. The tenant is granted a monetary order for this amount.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of **\$800.00**. 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.

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: December 05, 2019

Residential Tenancy Branch