



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

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

The tenants' application is seeking orders as follows:

1. Return of double the security deposit; and
2. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For damages to the rental unit;
3. To keep all or part of the security deposit; and
4. 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 issue

Although the parties provided evidence on the issue of unpaid rent at the hearing; however, the landlord filed a previous application for unpaid rent, which was heard on July 29, 2019. The landlord did not attend the hearing. As the tenant was present at the hearing the Arbitrator dismissed the landlord's claim for unpaid rent without leave to reapply.

Therefore, I decline to hear the issue of unpaid rent as a decision was already made. I have noted the file numbers that were heard on July 29, 2019, on the covering page of this decision.

Issues to be Decided

Are the tenants entitled to double the security deposit?
Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The parties agreed that the tenancy began on February 6, 2018. Rent in the amount of \$3,200.00 was payable on the first of each month. The tenants paid a security deposit of \$1,600.00. The tenancy ended on July 31, 2019.

The parties agreed that effective April 1, 2019, rent was reduced to \$3,100.00, as the tenant was taking over the responsibilities of the hydro account.

The parties agreed a move-in and move-out condition inspection report was completed. Filed in evidence is a copy of the inspection report.

Tenants' application

The tenants claim as follows:

a.	Double the security deposit	\$3,200.00
b.	Filing fee	\$ 100.00
	Total claimed	\$3,300.00

The tenant testified that they provided their forwarding address on July 31, 2019, at the move-out condition inspection and it was written on the report.

The landlord acknowledge they received the tenant's forwarding address on July 31, 2019.

Landlord's application

The landlord claims as follows:

a.	Unpaid hydro	\$ 624.42
b.	Cleaning	\$ 484.88
c.	Filing fee	\$ 100.00
	Total claimed	\$1,209.30

The landlord testified that at the start of the tenancy the hydro was included in the rent, which is not something they normally due; however, the tenants wanted it to be included and they agreed on rent in the amount of \$3,200.00.

The landlord testified that they valued the use of the utilities at \$100.00 per month; however, the tenants exceeded that amount and they should be entitled to recover the difference. The landlord seeks to recover the cost of \$624.42. Filed in evidence are invoices for utilities.

The landlord testified that the tenant did not have the rental unit professionally cleaned. The landlord stated that they had to pay the amount of \$484.88. Filed in evidence is an invoice for cleaning.

The tenant testified that hydro was included in rent; however, the landlord was upset that the cost was to high. The tenant stated that on April 1, 2019, they agreed to reduce the rent to \$3,100.00 and they had the utilities place in their own name and have paid all the utilities since the account was placed in their name

The tenant testified that they left the rental unit clean. The tenant stated that the landlord was not happy because it was not done by a cleaning company. The tenant stated that they contact a cleaning company at the move-out condition inspection and were told the cost would be \$200.00. The tenant stated that they agreed that the landlord could keep the amount of \$200.00 for cleaning.

The tenant testified that they question the validity of the receipt the landlord has submitted as evidence. The tenant stated that the tax rate charged is not accurate, as it is charging 14%. The tenant stated that if they landlord paid the amount of \$484.88, it would have been reasonable to have that amount included in their original application; however, they listed the amount of \$300.00.

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.

Tenants' application

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) 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.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, the landlord applied for arbitration claiming against the security deposit on August 16, 2019. I find the landlord did not make their claim within 15 days of the end of the tenancy or receipt of the forwarding address, as their last day to claim against the security deposit was August 15, 2019.

I find the landlord has breached section 38(1) of the Act.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenants the sum of **\$3,300.00** comprised of double the security deposit (\$1,600.00) on the original amounts held and to recover the \$100.00 fee for filing this Application.

Landlord's application

In this case, the hydro was included in the rent when the tenancy agreement was entered into. If the tenant was required to pay an amount over any credits, that was required to be in the rental agreement, which it is not. I find the landlord was responsible for the hydro from when the tenancy commenced to March 31, 2019.

The landlord provided an invoice for hydro that is from April 1 to April 8, 2019, in the amount of \$26.51, I find the tenants are responsible for this invoice as they agreed that they would pay the utilities commencing April 1, 2019. Therefore, I find the landlord is entitled to recover the cost of the hydro in the amount of **\$26.51**.

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.

The move-out condition inspection report supports that the tenants left the rental unit reasonably clean. The tenants agreed in the report that the landlord may retain the amount of \$200.00 for additional cleaning.

While the landlord has provided a receipt for additional cleaning, the tenant has raised the issue of the validity of the invoice, as the taxed claimed is greater than allowable tax and it was not the amount originally claimed, although it predates the landlord's application.

I accept the evidence of the tenant that the invoice submitted by the landlord is questionable, as the tax rate is high. Further, the invoice provides a fee for picking up cleaning supplies. This is unreasonable when a cleaning company should have those supplies already. I am not satisfied that the receipt is genuine. Therefore, I find the landlord is only entitled to recover the agreed upon amount for cleaning in the amount of **\$200.00**.

I find that the landlord has established a total monetary claim of **\$326.51** comprised of the above described amounts and the \$100.00 fee paid for this application.

As both parties are entitled to a monetary order as described above, I find it appropriate to offset the amounts. The tenants received a monetary order of **\$3,300.00** and the landlord received a monetary order of **\$326.51**. I have offset the two amounts. This leaves a balance owing to the tenants in the amount of **\$2,973.49**. The tenants are granted a formal order, pursuant to section 67 of the Act for the balance due.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants' application for double the security is granted. The landlord's application for monetary compensation is granted. Both monetary orders were offset with each other leaving a balance due to the tenant.

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