



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNSD FF

Landlord: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 28, 2020.

The Landlord and the Tenant both attended the hearing. Both parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages. Neither party took issue with the service of these packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Landlord

- Is the Landlord entitled to compensation for damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Tenant

- Is the Tenant entitled to the return of the security deposit held by the Landlord?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that:

- The tenancy began in December 2016
- Monthly rent was set at \$1,100.00 but was raised to \$1,200.00. Rent was due on the first of the month.
- The Landlord still holds a security deposit in the amount of \$550.00.

The Landlord confirmed he received the Tenant's written Notice to End tenancy on August 27, 2019, effective the end of September 2019. The Tenant moved out in early September and he mailed the keys back shortly after. The Landlord received the keys in the mail on September 6, 2019. The Landlord confirmed that he received the Tenant's forwarding address in writing on September 8, 2019. The Landlord stated that he did not complete a move-in inspection report, nor did he take any photos to show the condition of the unit at the start of the tenancy. He only took a couple of photos at the end of the tenancy.

The Landlord stated that after the Tenant moved out, he noted there was wall damage, paint damage, and the unit was in need of repairs and cleaning. The Landlord explained that he contacted the Tenant about retaining the deposit, but the relationship between the parties degraded in September. The Landlord stated he did not give the Tenant written notice of an opportunity for inspection until October 6, 2019, which was to take place on October 8, 2019. The Tenant attended the unit on October 8, 2019, and a move-out inspection was completed. A copy of the move-out inspection report was provided into evidence and it shows the Tenant did not agree with the damages, and he noted the damage was pre-existing.

The Landlord identified the following items on his application for compensation:

- 1) \$1,802.88 – Painting and wall patching

The Landlord stated that the Tenant damaged the walls, left lots of holes and the whole unit needed to be repainted. The Landlord stated that the rental unit was repainted last in December of 2015. The Landlord stated that he got a quote from a company to highlight what it could have cost, but he ended up using his own company to perform the work. The landlord only provided a copy of the estimate from the company he did not hire to do the work. The landlord provided a couple of photos taken at the end of the tenancy.

The Tenant stated that the walls were in poor shape at the start of the tenancy and all of the damage was pre-existing. The Tenant pointed to the lack of evidence showing the state of repair at the start of the tenancy. The Tenant denies doing any of the above damage.

2) \$75.00 – Bedroom Blind

The Landlord stated that the Tenant broke the blind in the bedroom, which required replacement. The Landlord stated that he ended up replacing all the blinds in the unit, so he does not have a receipt for this item only. The Landlord did not have any evidence showing the condition at the start of the tenancy.

The Tenant stated the blind was broken at the start of his tenancy, and he asked the Landlord to replace it while they were there, but he failed to do so. The Tenant denies damaging the blinds.

3) \$265.00 – Cleaning costs

The Landlord provided a copy of a cleaning estimate from a third party. The Landlord stated that there was a lot of general dirt and debris, including the kitchen, bathroom, and many of the windows. The Landlord stated that he never ended up hiring the cleaning company, and his wife did the work herself and it took it around 15 hours. The Landlord stated that the unit was cleaned after the kitchen was redone, and the unit was repainted sometime in November 2019. The Landlord provided a couple of photos, mostly of minor damage, but also of dirty window tracks, and the kitchen fan. The Landlord also provided some photos of wall scuffs and marks.

The Tenant stated that they cleaned the unit and it was left in the same condition. The Tenant denies scuffing the walls, and says he cleaned the fan, the windows and should not have to pay to have the place cleaned up. The Tenant pointed out that the Landlord undertook kitchen renovations, which would have created more mess than he should have to pay for.

4) \$1,200.00 – lost rent for October 2019

The Landlord stated he wants to recover rent for October because of the Tenant's late move-out inspection, which just delayed the work he had to do, and the timelines for re-renting the suite.

The Tenant stated that it is not his fault the Landlord failed to book the inspection until October 8, 2019, so he should not be penalized for this late inspection.

Analysis

Landlord's Application

With respect to the Landlord's application to recover money for damages, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

For the first two items on the Landlord's application, I note there is no move-in inspection report, nor is there any documentary evidence showing the condition of the rental unit at the start of the tenancy. I find the Landlord failed to sufficiently document the condition at the start of the tenancy and the parties appear to disagree on the condition at the start of the tenancy. I find it important to note that the burden of proof rests with the Landlord to establish his claim, and prove that the Tenant caused, and is responsible for the damage. The Landlord has provided zero documentary evidence to show the condition of the walls or the blinds at the start of the tenancy. Ultimately, without further proof from the Landlord, I find he has not met the burden placed on him

to show that it was the Tenant who is responsible for the damage and that it wasn't pre-existing or a result of normal wear and tear.

With respect to item #3, I find there is insufficient evidence to demonstrate that the Tenant caused the damage to the kitchen cabinets, and the walls such that it would be the Tenant's fault that kitchen renovations or wall repairs had to be done. I note the Landlord undertook some significant repairs to the unit, and chose to rip out cabinets, and refinish the walls. Without evidence that the Tenant's are responsible for these items, I find it was the Landlord's choice and responsibility to perform these renovations, including cleaning up after them. I find that there would have likely been significant debris and clean up following the renovations, which would not have been the responsibility of the Tenant. I note the Landlord didn't actually hire the company he provided an invoice from. Rather his wife cleaned the unit after he completed the renovations. Ultimately, I find the Tenant is not responsible for this item, as a material portion of the mess would have been from the renovation work. I dismiss the Landlord's application on this item.

With respect to item #4, I note the Landlord is seeking to recover October 2019 rent because of the Tenant's "late inspection". The Landlord received the Tenant's notice to end tenancy on August 27, 2019, for the end of September 2019. I note the Tenant moved out before this time. However, his notice did not take effect until the end of September, and rent was paid until that time. As such, I find the tenancy did not formally end until September 30, 2019. I further note it is the Landlord's obligation to offer the Tenant formal opportunities for inspection, and I note the Landlord did not offer the tenant written notification of an inspection until October 6, 2019. Subsequently, the inspection was held on October 8, 2019. I find it was the Landlord's responsibility to schedule the inspection, and it is his responsibility for waiting until October 6, 2019, to offer a formal opportunity to do so. I do not find the Landlord is entitled to compensation due to the Tenant's "late inspection". I dismiss this item, in full.

The Landlord's application is dismissed, in full, without leave to reapply.

Tenant's Application

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to

do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

As stated above, I find the tenancy ended on September 30, 2019, the date the effective date of the Tenant's notice, and the date that rent was paid until. The Landlord received the Tenant's forwarding address in writing on September 8, 2019. I find it important to note that the Landlord did not perform and complete a move-in inspection at the start of the tenancy.

As a result of not performing a proper move-in inspection and completing the report, I find the Landlord extinguished his right to claim against the security deposit. This extinguishment is explained in section 24(2) as follows:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection]

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[Reproduced as written.]

Based on the above, I find the Landlord extinguished his right to file against the security deposit, and he was required to return the security deposit, in full, within 15 days of receiving the Tenants' forwarding address in writing, or the end of the tenancy, whichever is later.

In this case, the latter of those two dates was September 30, 2019. Pursuant to section 38(1) of the *Act*, the Landlord had 15 days to repay the security deposit (in full) to the Tenant. However, the Landlord did not do so and I find the Landlord breached section 38(1) of the *Act*.

Accordingly, as per section 38(6)(b) of the *Act*, I find the Tenants are entitled to recover double the amount of the security and pet deposit (\$550.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute

resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issue the Tenants a monetary order for \$1,200.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

The Tenants are granted a monetary order pursuant to Section 38 and 67 in the amount of **\$1,200.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: January 28, 2020

Residential Tenancy Branch