



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Norman Estates Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNRL-S, MNDCL-S, FFL, MNDL-S
Tenant: FFT, MNDCT, MNSD

Introduction

This hearing dealt with cross applications by the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for the following:

- a monetary order for rent and utilities pursuant to section 67 of the *Act*.
- a monetary order for damage or compensation pursuant to section 37 and 67 of the *Act*;
- authorization to retain the security deposit to be applied to the above noted claims; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72(1) of the *Act*.

The tenant applied for the following:

- a monetary order for return of the security and pursuant to section 38(1)(c) of the *Act*;
- a monetary order for damage or compensation pursuant to section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72(1) of the *Act*.

The landlord and tenant appeared at the hearing and were given the opportunity to make submissions as well as present affirmed testimony and evidence. The landlord's witness did not provide testimony.

The landlord testified that the tenant was served with the Application for Dispute Resolution by registered mail sent on January 24, 2020. The tenant confirmed receipt of the Application for Dispute Resolution and evidentiary documents. I find that the tenant received the documents on January 29, 2020 in accordance with section 88 and 89 of the *Act*.

The tenant affirmed that the landlord was served with the Application for Dispute Resolution and evidentiary package by registered mail sent on January 20, 2020. The landlord confirmed receipt of the Notice of Dispute Resolution and evidentiary documents and is found pursuant to sections 88 and 89 of the *Act*, to have received the documents on January 25, 2020 in accordance with the *Act*.

The landlord and tenant provided the Canada Post tracking numbers listed on the cover page of this decision.

The landlord affirmed that the tenant had paid the rent during the tenancy and that he managed to re-rent the rental unit immediately in early December 2018 and is no longer seeking the compensation of rent from the tenant as per the advice from the Residential Tenancy Branch, and the landlord withdrew this part of the claim.

Issues to be Decided

- Is the landlord entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?
- Is the landlord entitled to a monetary order for damages pursuant to section 67 of the *Act*?
- Is the landlord entitled to retain the security deposit to be applied against the above noted claims, pursuant to section 38 of the *Act*?
- Is the landlord entitled to recover the filing fee from the tenant pursuant to section 72 of the *Act*?
- Is the tenant entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?
- Is the tenant entitled to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence as well as the landlords and tenant's testimony, not all details of the submissions and arguments are reproduced here. The relevant aspects of this matter and my findings are set out below. The witness for the landlord did not provide testimony.

The tenant has the burden of proof to establish the tenant's monetary claims. The landlord has the burden of proof to establish the landlord's monetary claims.

The landlord testified the one-year fixed term tenancy began on August 27, 2018. The tenant affirmed that he vacated the property on December 8, 2018. The monthly rent was \$1,025.00. A copy of the tenancy agreement was submitted in evidence.

Both parties agreed that the security deposit was \$512.00. The tenant paid \$487.00 as stipulated in the tenancy agreement and a further \$25.00 to the landlord. The security deposit is held in Trust by the landlord.

The tenant affirmed that the landlord completed a condition walk through with him on moving in, but the landlord failed to complete a move-out condition inspection. The tenant affirmed that he paid the rent for December 2018 and found another tenant for the landlord to rent the unit based on the landlord's agreement. The tenant affirmed that he had called the landlord on his cellphone numerous times and on October 21, 2019 provided the landlord with a forwarding address in writing requesting his security deposit back.

The landlord affirmed that on the advice of the Residential Tenancy Branch, he returned the tenant the sum of \$825.00 (part of the rent for December 2018) by cheque as he did not wish to 'double dip' the rent. The tenant confirmed receipt of the cheque for \$825.00. The landlord further testified that he did not receive the tenant's forwarding address until May 2019.

The landlord testified that after the tenant vacated the unit on December 8, he noted that the gas stove heat shield was missing. The landlord affirmed that the manufacturer no longer produced the heat shield and he had no alternative but to purchase a new stove for the rental unit at a cost of \$695.00. The landlord affirmed in testimony that the stove oven was several years old.

The landlord affirmed that the window in the kitchen had been broken by the tenant and despite the tenant's efforts to repair the window, the work was careless, and would require a new replacement window together with labour charges. The landlord affirmed that it would be approximately \$250.00 with labour costs to replace the small kitchen window.

The tenant disputed the damage to the oven shield claimed by the landlord and argued that the oven was old, and the landlord had failed to provide a move-out inspection report. The tenant affirmed and agreed that there was damage to the windowpane, but he had attempted to repair the window with a new piece of glass and putty.

The landlord testified that that the tenant had not paid the Fortis BC and Hydro bills in accordance with the terms of the tenancy agreement before he left the rental unit. The amount owed was \$200.00. The tenant confirmed that when he left the tenancy, he had not received the bills and agreed to pay the \$200.00 that he owed for the Fortis BC and Hydro utilities.

The landlord requested a monetary order list of claimed expenses calculated as follows:

| Receipt/Estimate | For | Amount |
|-------------------------|---------------|-------------------|
| | Utilities | \$200.00 |
| | Broken window | \$250.00 |
| Receipt | New stove | \$695.00 |
| Total | | \$1,145.00 |

The tenant's claim is that he is seeking the return of his security deposit of \$512.00 and is entitled to double as he forwarded his address to the landlord.

Analysis

Based on the testimonies of the parties provided during the hearing, the documentary evidence before me and on the balance of probabilities, I find the following:

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish all of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The tenant has the burden of proof to establish the tenant's monetary claim. The landlord has the burden of proof to establish the landlord's monetary claims.

Damaged Window

The landlord had testified that the window in the kitchen had been broken by the tenant which was confirmed by the tenant in testimony. The landlord affirmed that it would be likely to be approximately \$250.00 with labour costs to replace the small window with labour costs.

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1:00 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The tenant agreed in the hearing that there was damage to the window. I award the landlord the sum of \$250.00 compensation towards the damage to the window.

Stove & heat shield screen

The landlord and tenant testified that the stove and the heat shield screen in the rental unit were several years old. I do not accept the landlord's evidence that heat shield screen was damaged beyond the level of ordinary wear and tear.

Policy Guideline 40 states:

"When applied to damages caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item "

I find that the landlord's application for compensation for the replacement stove and heat shield screen are inaccurate. I do not find that the tenant damaged the complete stove and screen as a result of his negligence. I find the tenant provided testimony that the stove was "old" and in view of the age required replacing.

Furthermore, Policy Guideline 40 states the life span of an oven is 15 years. I find the tenant's testimony convincing, the landlord failed to provide a receipt and based on Policy Guideline 40, I decline to award the landlord any monetary amount for the replacement stove oven.

Hydro and Fortis Utility.

The landlord claimed a monetary compensation for \$200.00 for outstanding utilities. It is incumbent on the landlord to submit evidence in support of his claim. The tenant agreed and testified that he believed he owed the landlord the sum of \$200.00 for the hydro and gas utility bills. Based on the tenant's testimony that he owed the utilities for the sum of \$200.00. I allow the landlord's claim for the sum of \$200.00.

Security Deposit and Pet Damage 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 security 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 security deposit. The tenants testified that they had not authorized the landlord to retain any portion of the security deposit.

Section C(3) of Residential Tenancy Branch Policy Guideline 17 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

Based on the testimony of the tenant, I find that the landlord was served with the tenant's forwarding address by texts and followed up with written correspondence on October 21, 2019. This letter was submitted in evidence by the tenant.

I find the landlord had 15 days from when the tenant vacated the rental property or provided a forwarding address to return the security deposit to the tenant or file an application for Dispute Resolution Proceedings. Based on the evidence before me, I find that the landlord did not return the tenant's security deposit within 15 days of the receipt of the forwarding address and written correspondence dated October 21, 2019.

I find that the landlord did not file an application with the Residential Tenancy Branch to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address by text and in writing.

I find that the landlord has not provided evidence that he gave the tenant two opportunities to attend the move-out inspection under section 36 of the *Act* and has extinguished his right under section 35 of the *Act*.

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

If a landlord fails to comply with section 35 of the *Act*, the Arbitrator has to double the deposit, I find that the landlord has not provided evidence that he gave the tenant two opportunities to attend the move-out inspection under section 36 of the *Act* and has extinguished his right under section 35 of the *Act*.

Therefore, pursuant to section 38 of the *Act* and Residential Tenancy Branch Policy Guideline 17, the tenant is entitled to receive double his security deposit.

| ITEM | AMOUNT |
|--|-----------------|
| Tenant's security deposit | \$512.00 |
| Double the security deposit | \$512.00 |
| Minus the utilities owed to the landlord | (\$200.00) |
| Broken window, plus labour | (\$250.00) |
| Total Amount due to Tenant | \$574.00 |

In this instance and on the balance of probabilities the landlord has failed the remaining part of his monetary application. I find that the landlord has provided insufficient evidence to prove or verify the value of the loss or damages claimed and has extinguished his right to claim.

As the landlord was unsuccessful in his application, he may not recover the filing fee pursuant to section 72 of the *Act*.

As the tenant was partially successful in his application, he may recover the \$50.00 filing fee for this application.

Conclusion

The tenant is granted a monetary order in the amount of **\$624.00**

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) to 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: June 6, 2020

Residential Tenancy Branch