



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDL-S
Tenant: MNSD

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for the return of the security deposit, pursuant to section 38.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67; and
- authorization to retain the tenant's security deposit, pursuant to section 38.

Landlord B.M.A (the "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that they received the other's application for dispute resolution. No services issues were brought forward by either party. I find that the parties were each sufficiently served, for the purposes of this *Act*, with the other's application for dispute resolution, pursuant to section 71 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?

3. Are the landlords entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 31, 2019 and ended on July 16, 2020. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. The landlord did not complete a move in condition inspection report and did not ask the tenant to complete one. The tenant personally provided the landlord with his forwarding address in writing on July 16, 2020. A copy of the forwarding address letter was entered into evidence. The landlords' application for dispute resolution was made on August 25, 2020. The security deposit was not returned to the tenant and the tenant did not authorize the landlord to retain it.

The landlord testified that after the tenant moved out the landlords hired a home inspector who found the following damages, for which the landlords are seeking compensation:

Item	Amount
Repaint living room and kitchen ceiling	\$200.00
Repair loose bathroom receptacle	\$150.00
Replace bathroom tile	\$500.00
Re-caulk shower	\$120.00
Total	\$970.00

The home inspection report was entered into evidence and states that the above areas require repair.

Repaint living room and kitchen ceiling

The landlords testified that the ceilings of the subject rental property were painted four months before the tenant moved in and were in good and clean condition at the start of this tenancy. The landlord testified that the ceiling in the living room and kitchen were dirty at the end of this tenancy and required repainting. A handwritten quote in the amount of \$200.00 was entered into evidence. The landlord did not provide any documentary evidence regarding the move in condition of the ceilings.

The tenant testified that the ceilings were in the same condition on move out as on move in. The tenant testified that the ceilings were dirty when he moved in.

Repair loose bathroom receptacle

The landlord testified that the bathroom receptacle was in good working order at the start of this tenancy and required repair at the end of this tenancy. A handwritten quote in the amount of \$150.00 was entered into evidence. The landlord did not provide any documentary evidence regarding the move in condition of the receptacle.

The tenant testified that the bathroom receptacle was in the same condition on move out as on move in.

Replace bathroom tile

The landlord testified that the tenant broke tiles in the bathroom and that the tiles therefore had to be replaced. The landlord testified that he did not know how old the tiles were. A handwritten quote in the amount of \$500.00 was entered into evidence. The landlord did not provide any documentary evidence regarding the move in condition of the tiles.

The tenant testified that the bathroom tiles were cracked when he moved in.

Re-caulk shower

The landlord testified that the home inspection found that the caulking in the shower was failing and required replacement. The landlord testified that the shower was re-

caulked shortly before the tenant moved in, so should have lasted longer and so the tenant must be responsible for the caulking failure. A handwritten quote in the amount of \$120.00 was entered into evidence. The landlord did not provide any documentary evidence regarding the move in condition of the caulking.

The tenant testified that he did not damage the caulking and used the shower in a normal fashion. The tenant testified that the caulking was in the same condition on move out as on move in.

Analysis

Landlords' claim

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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 onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The tenant testified that the subject rental property was in the same condition on move out as on move in. The landlord testified that the tenant damaged the ceilings and the bathroom. The landlord did not provide any evidence to prove the move in condition of the subject rental property. As stated above, when one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the landlord has failed to prove that the tenant damaged the property. The home inspection report is not helpful in this case, because the landlord has not proved the move in condition of the property. I therefore dismiss the landlords' claim, without leave to reapply.

Tenant's claim

I find that the landlords were served with the tenant's forwarding address on July 16, 2020 in accordance with section 88 of the *Act*.

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.

I find that the landlords applied to retain the tenant's security deposit more than 15 days after they received the tenant's forwarding address in writing. Therefore, pursuant to section 38(6)(b), the tenant is entitled to double the return of his security deposit in the amount of \$1,000.00.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23(4) of the *Act* states:

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

Section 24(2)(c) of the *Act* states:

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

The landlord testified that no move in condition inspection report was completed. Responsibility for completing the move in inspection report rests with the landlords. I find that the landlords did not complete the move in condition inspection report in accordance with the Regulations, contrary to section 24(2)(c) of the *Act*.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection report, I find that the landlords' eligibility to claim against the security deposit and pet damage deposit for damage arising out of the tenancy is extinguished.

Section C(3) of Policy Guideline 17 states that unless the tenants have 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 claimed against the deposit for damage to the rental unit and the landlords' right to make such a claim has been extinguished under the *Act*.

I find that pursuant to section 24 of the *Act* and Policy Guideline 17, the tenant is entitled to double the return of the security deposit. I note that while the tenant is entitled to double the return of the security deposit under multiple sections of the *Act*, the tenant is not entitled to multiple monetary awards.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,000.00.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: November 26, 2020

Residential Tenancy Branch