



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT, MNDCL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain the return of double their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?
Is the landlord entitled to recover the filing fee for this application from the tenant?
Is the tenant entitled to a monetary order as compensation for loss or damages?
Is the tenant entitled to a monetary award equivalent to double the value of his security deposit because of the landlord's failure to comply with the provisions of section 38 of the *Act*?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave the following testimony. The tenancy began on September 1, 2015 and ended on February 28, 2021. The tenant testified that the rent at move out was \$1750.00 or \$1800.00 per month but couldn't be sure. The tenant testified that he paid a security deposit of \$800.00 which the landlord still holds. The tenant testified that the landlord repeatedly imposed illegal rent increases over his tenancy that were above the regulations and without issuing the proper forms.

The tenant testified that he had to paint the unit at move in as the walls were in rough condition and wants to be compensated for his work as the landlord supplied the paint. The tenant testified that he fixed the fireplace in August 2018 at his own expense which he wants to be reimbursed. The tenant testified that the unit had extensive mold throughout the tenancy that required the purchase of a dehumidifier and numerous puffers for his wife. The tenant testified that the landlord refused to conduct any repairs which exasperated the situation. The tenant testified that the landlords claim for flooring is unreasonable as the floors were extremely old and in poor condition. The tenant submits that the landlord hasn't repaired the floors yet and therefore is not entitled to the

claim. The tenant submits that the unit was professionally cleaned and that the landlords claim for blind cleaning and wall patching is without merit. The tenant submits that the landlord did not file his application within 15 days of receiving his forwarding address so he should be entitled to the return of double his deposit.

The tenant is requesting the following:

Illegal rent increase 2017 and 2019	\$5100.00
Painting of suite 827 square feet x \$2 per foot	\$ 1654.00
Fireplace	\$150.00
Dehumidifier	\$243.00
Medical Expenses	\$ 2500.00
Return of double the deposit	\$1600.00
Filing Fee	\$100.00
Total:	\$11,347.00

The landlord gave the following testimony. The landlord testified that all of the tenant's monetary claims were done by mutual agreement and should not be entitled to them. The landlord testified that he asked the tenant for certain increases which the tenant agreed to. The landlord testified that he is unsure why the tenant is doing this to him after a long and happy tenancy. The landlord testified that there wasn't a mold issue as alleged by the tenant. The landlord testified that costs were incurred to inspect and ensure that there wasn't a mold issue. The landlord testified that the tenant had a dog in the unit which caused damage to the hardwood and laminate flooring. The landlord testified that the blinds required cleaning and some wall patching at the end of the tenancy.

The landlord is seeking the following:

Laminate flooring estimate	\$2772.95
Hardwood flooring estimate	\$ 2743.13
Cleaning estimate	\$189.00
	\$
	\$
	\$
Total:	\$5705.08

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

It is worth noting that each party indicated that they were unfamiliar with their rights, obligations, and requirements each had under the Residential Tenancy Act. Both parties stated that if they had done something incorrectly it was because they lacked the knowledge of what was required. However, that does not excuse them from what they were required to do.

I first address the landlords claim. The landlord has only provided estimates for his claim. In addition, he was unsure of the actual age of the flooring. The landlord has not provided sufficient evidence of any “out of pocket” costs. Based on the insufficient evidence before me and the landlord’s inability to satisfy the four elements noted above on a balance of probabilities, dismiss their claim in its entirety without leave to reapply.

I address the tenant’s application as follows. I find that the rent increases, painting, and fireplace repair were done by consent and that the landlord is not responsible for these costs. The tenant’s submission that he became aware of his rights after five and half years of living in the unit is an insufficient basis to advance his claim. Furthermore, I find that the tenant failed to mitigate their losses on all the claims as required under section 7(2) of the *Act*, also noted above as part of the four elements that must be satisfied. Based on the totality of the evidence before me, the tenant has failed to provide sufficient evidence to prove their claim on a balance of probabilities, accordingly; I dismiss these claims without leave to reapply.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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.

Both parties confirmed that there was a move in condition inspection report done at the outset of the tenancy and that a move out condition inspection report was done on February 28, 2021. The tenant provided a copy of the report that reflects that he provided his forwarding address on that day. The landlord filed an application on March 16, 2021; 16 days after the end of the tenancy and receiving the tenants forwarding address. Also, the landlord did not include a request to retain the deposit as part of his application. I find that the landlord did not act in accordance with the above section, accordingly; the tenant is entitled to the return of double the deposit $\$800.00 \times 2 = \1600.00 .

As the tenant was not fully successful in their application, I dismiss their request for the recovery of the filing fee.

Conclusion

The tenant has established a claim for \$1600.00. I grant the tenant an order under section 67 for the balance due of \$1600.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application is dismissed in its entirety without leave to reapply.

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: August 13, 2021

Residential Tenancy Branch