



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL; MNSDS-DR

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

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

- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38.

The landlord, the landlord's agent, 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. This hearing lasted approximately 67 minutes.

The hearing began at 1:30 p.m. with me and the tenant present. The landlord and her agent called in late at 1:31 p.m. I did not discuss any evidence with the tenant in the absence of the landlord and her agent. The hearing ended at 2:37 p.m.

The landlord confirmed that her agent had permission to speak on her behalf and assist her with the English language at this hearing. The landlord stated that she owns the rental unit. She confirmed the rental unit address during this hearing.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”). The landlord, the landlord’s agent, and the tenant all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, as well as the possible consequences and outcomes, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle both applications.

Both parties confirmed receipt of the other party’s application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party’s application.

Preliminary Issue – Inappropriate Behaviour by the Landlord and her Agent during this Hearing

Rule 6.10 of the RTB *Rules* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing
Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

During this hearing, the landlord stated that she had to take care of her baby, who was crying loudly throughout this hearing. I informed the landlord and her agent that I was unable to hear them properly, at different times during this hearing. I had to repeat information to the landlord and her agent, and they had to repeat information to me, since we were unable to hear each other properly, at different times during this hearing.

The landlord was given extra time during this hearing, as she asked to turn on her computer, look up information, and search for her application paperwork.

Throughout this hearing, the landlord's agent was angry, upset, and argumentative. He yelled at, argued with, and interrupted the tenant and I, while we were speaking. The landlord's agent became angry and upset when I asked him questions about the landlord's application. He interrupted and yelled at the tenant, when the tenant answered his questions and he did not like the answers.

When I cautioned the landlord's agent about his behaviour, he became even more upset and angry and continued yelling at me and interrupting me. However, I allowed the landlord's agent to attend the full hearing, despite his inappropriate behaviour, in order to allow him to present the landlord's application and respond to the tenant's submissions. This hearing lasted 67 minutes, due to the inappropriate behaviour of the landlord's agent and because the landlord asked for extra time to look up information during this hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for compensation under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for her application?

Is the tenant entitled to obtain a return of double the amount of the security deposit?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on November 1, 2020 and ended on March 31, 2021. Monthly rent in the amount of \$650.00 was payable on the first day of each month. A security deposit of \$325.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. No move-in or move-out condition inspection reports were completed for this tenancy. The landlord did not provide the tenant with an opportunity to conduct a move-out condition inspection, using the approved RTB form. The landlord

did not have written permission to retain any amount from the tenant's security deposit. The tenant provided a written forwarding address to the landlord on April 15, 2021 by email, which was received by the landlord on the same date.

The landlord's agent stated that the landlord's application to retain the tenant's security deposit was filed on May 19, 2021. I informed him that the online RTB system indicates that the landlord's application was filed on May 18, 2021.

As per her online application details, the landlord seeks a monetary order for missing items of \$1,800.00, damages of \$3,000.00, unauthorized parking of \$540.00, to retain the tenant's security deposit of \$325.00, and to recover the \$100.00 filing fee. The tenant disputes the landlord's application.

The tenant seeks the return of double the amount of his security deposit of \$325.00, totalling \$650.00. The landlord disputes the tenant's application.

The landlord's agent testified regarding the following facts. The tenant caused damages to the rental unit. The tenant engaged in unauthorized use of the landlord's parking stall. The rental unit was furnished when the tenant moved in, so he was not permitted to bring in furniture or move any furniture around. There is no way to provide the value of the missing items.

The landlord testified regarding the following facts. She wants to find her missing items, rather than getting back the value of these items. She does not want her money back since the money is not important to her. She wants to keep the tenant's security deposit, as it is not just for cleaning but to return the place to where it was before. There were problems with the sink and walls at the rental unit. The tenant parked in unauthorized parking at the rental property. The landlord just wants to know where the tenant hid or put her missing items, she is not saying that the tenant stole them.

The tenant testified regarding the following facts. Regarding the landlord's missing items claim, he does not know what items the landlord hid in different shared spaces at the rental unit. He had a roommate at the rental property, and she was not his girlfriend when he moved in, as they were not dating at that time. He left the place in better condition than when he moved in. As per the landlord's own evidence, the tenant does not know which of the spots was the landlord's parking spot. The tenant left his car in the staff parking at the rental property with the authorization of the concierge. There were only three parking spots with a plug and the tenant needed a plug for his car. When the concierge needed the plug, they removed it from the tenant's car.

Analysis

Landlord's Application

Applicant's Burden of Proof and Presenting Claims

At the outset of this hearing, I repeatedly informed both parties that the applicants in each application had the burden of proof to present their claims on a balance of probabilities. Both parties affirmed their understanding of same and did not have any questions.

During this hearing, the landlord claimed that she did not have her application paperwork in front of her. I provided the landlord and her agent with additional time throughout this hearing to find the landlord's paperwork and look through it. When I asked the landlord and her agent to present the landlord's application, they only provided brief statements. I repeatedly asked them if they wanted to add any additional information to their submissions.

Credibility

I found the tenant to be a more credible witness, as compared to the landlord and her agent. The landlord provided her evidence in a confusing and inconsistent manner. The landlord was often looking up information or searching for paperwork throughout this hearing. The landlord's agent provided his evidence in an upset, angry, agitated, argumentative, inconsistent, and confusing manner. As noted above, he interrupted the tenant and I, while we were speaking. When I asked him questions about the landlord's application or for details regarding the landlord's claims, he argued with me and yelled at me, rather than answering my questions.

Conversely, I found that the tenant provided his evidence in a calm, candid, forthright, and consistent manner. The tenant did not argue with or interrupt the landlord or her agent while they were speaking. The tenant answered questions candidly and agreed when facts were unfavourable to his claim, such as the questions posed by the landlord's agent regarding parking at the rental property.

Rules and Legislation

The following Residential Tenancy Branch (“RTB”) *Rules* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Findings

On a balance of probabilities and for the reasons stated below, I dismiss the landlord’s entire application of \$5,440.00, without leave to reapply.

I find that the landlord and her agent did not properly present the landlord’s evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

This hearing lasted 67 minutes, so the landlord and her agent had ample opportunity to present the landlord's application and respond to the tenant's claims. During this hearing, I repeatedly asked the landlord and her agent if they had any other information to present and gave them multiple opportunities for same. The landlord's agent was more focussed more on arguing with me and interrupting me, than presenting the landlord's application.

The landlord and her agent did not provide any monetary amounts for the landlord's claims during this hearing. The landlord and her agent did not review the landlord's documents in any detail during this hearing. The landlord supplied many photographs as evidence but did not go through any of them, during this hearing. I find that the landlord failed the above four-part test. The landlord did not provide a monetary order worksheet with her application. The landlord and her agent did not provide a monetary breakdown of claims during this hearing.

The landlord did not provide estimates, quotes, or receipts to show that she paid to replace any missing items at the rental unit. The landlord and her agent did not indicate all of the missing items and their values during this hearing. The landlord provided photographs of empty jewelry boxes to indicate that her items went missing but did not explain these photographs at all during this hearing. The landlord testified that she did not want the cost of the missing items back, she only wanted to know the location of same. I accept the tenant's evidence that he did not know where the landlord hid her items, since it was a shared space with another roommate.

The landlord did not provide estimates, quotes, or receipts to show that she paid to complete repairs to damages in the rental unit. The landlord did not indicate what damages were caused, why the tenant was responsible, the amount to repair such damages, or how she mitigated her losses. I find that the landlord failed to prove damages beyond reasonable wear and tear, caused by the tenant, as required by Residential Tenancy Policy Guideline 1.

The landlord did not provide a parking agreement to show that the tenant violated any such agreement during his tenancy. The landlord did not indicate the cost to use the parking at the rental property, that the tenant was required to pay for any parking, or that the landlord pays any such cost for her own parking spot. The landlord did not indicate which parking spot she used, when the tenant parked in her spot, how many times this occurred, and what costs, if any, she suffered as a result of the tenant using her spot. I accept the tenant's evidence that he parked in different spots at the rental

property with the authorization of the concierge, and he did not know which of the parking spots belonged to the landlord.

Accordingly, as per her online application, the landlord's claim for missing items of \$1,800.00, damages of \$3,000.00, unauthorized parking of \$540.00, and to retain the tenant's security deposit of \$325.00, is dismissed without leave to reapply.

As the landlord was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant. Further, the landlord did not pay a filing fee to the RTB for her application, as she received a fee waiver from the RTB.

Tenant's Application

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 security 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 to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities and based on the testimony of both parties. This tenancy ended on March 31, 2021. The landlord did not have written permission to retain any amount from the tenant's security deposit. The tenant provided a forwarding address by email to the landlord on April 15, 2021. The landlord responded to the tenant's email. The landlord confirmed receipt of the tenant's forwarding address and listed this same address in her own application against the tenant. Email is permitted by section 88 of the *Act* and section 43 of the *Regulation*.

I find that the tenant did not extinguish his right to the return of his security deposit because he did not complete a move-out condition inspection report with the landlord, as per section 36 of the *Act*. I find that the landlord failed to provide the tenant with an opportunity to schedule a move-out condition inspection, using the approved RTB form, as per section 36 of the *Act* and section 17 of the *Regulation*.

The landlord's right to claim against the tenant's security deposit for damages was extinguished for failure to complete a move-in condition inspection report, as per section 24 of the *Act*. However, the landlord applied for other claims aside from damages.

The landlord continues to hold the tenant's security deposit of \$325.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to the double the amount of his security deposit of \$325.00, totalling \$650.00, from the landlord. The landlord applied to retain the tenant's security deposit on May 18, 2021, which is beyond the 15-day deadline from April 15, 2021, the later date that the landlord received the written forwarding address from the tenant.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$650.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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 04, 2021

Residential Tenancy Branch