



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
Landlord, G.E. Advocate, M.E.	310047261	MNDL-S, FFL
Tenant, Y.S	310047485	MNSDS-DR, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed claims for:

- \$3,375.00 compensation for damage for the Landlord, retaining security deposit for this claim; and
- recovery of his \$100.00 application filing fee.

The Tenant filed claims for:

- \$3,355.00 compensation for the return of the security deposit; and
- recovery of the \$100.00 application filing fee;

The Tenant, the Landlord, and an advocate for the Landlord, M.E. ("Advocate") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Notice of Hearing or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is either Party entitled to Recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on December 1, 2018, with a monthly rent of \$2,200.00, due on the first of each month. They agreed that the Tenant paid the Landlord a security deposit of \$1,100.00, and no pet damage deposit. They agreed that the tenancy ended on July 31, 2021, and that the Tenant provided his forwarding address to the Landlord in writing on August 9, 2021.

The Parties said that they did a move-in condition inspection report ("CIR"), and they both submitted a copy of this document. There are a few comments on the move-in CIR about damage in the unit at the start of the tenancy, including paint chips on the south wall of the kitchen and the east wall of the living room. It also noted that two doors in the kitchen by the sink have small chips, and that the north wall in the master bedroom needs repair and paint by the owner.

#1 LANDLORD'S CLAIMS

The move-in portion of the CIR gives a good status of the unit before the tenancy started; however, the Parties did not complete the move-out portion of the CIR. The Advocate said that he took videos of the damage at the end of the tenancy, but he did not upload them to the RTB, as these videos are not in evidence before me.

In his Application, the Landlord wrote the following to describe his claim:

The house was left back to the owner in very poor condition, the inside of the house needs to be painted, the carpet need to be changed and the kitchen cabinets have to repaired and repainted along with staircase railing and door frames. the house was cleaned poorly and its dirty. the damage is in excess of the 3375.00 which is one month rent and the security deposit. after all the quotes

for the damages are done, we will be seeking damages above the requested amount.

[reproduced as written]

The Landlord also submitted an invoice from a contractor dated September 15, 2021. This invoice listed the work done, as follows:

Prep and paint walls and trim of townhouse
Repair kitchen cabinets
Touch-up paint kitchen cabinets

Labour and Materials	\$7,250.00
GST @ 5%	<u>365.50</u>
Total Payable	\$7,612.50

Payment received.

In the hearing, the Tenant responded to the Landlord's comments, as follows:

At first, I signed with [the Landlord] 3 years, 4 months ago. ["T."] always fixed things like laundry machine. From May 2021, [M.E.] acting as landlord. I want to talk to [T.] and [the Landlord]. Not a married couple, but she's [the Landlord's] girlfriend. [She] was [his] rep.

At the [move-out] inspection, I insisted that [T.] would be with us, because [M.E.] didn't know about condition of house at start. I don't think I should pay for the damage. [M.E.] doesn't know where past damages were. Not pay for previous tenant's damage.

[M.E.] replaced carpets and painted, even through the dispute had not been finalized. When I went to the house on August 25 to see [the Landlord] and [M.E.], the house had already been renovated. All new paint and the carpet and why giving me the ,... why we have to pay for new carpet and new paint trim, just because the owner's son moves in? There may be wear and tear we made in 2½ years. How can the Landlord have me pay the cost? I think this is impure intention to use the Tenant's security deposit to pay the Landlord's costs.

I asked the Tenant why [M.E.] could not use the move-in CIR as a basis for doing the move-out inspection, and he said:

Yes, can use. Anyhow, [the Landlord or T.] can see the situation of the home status and then I will accept, but every time ask for [T.] will be there and we talk about the condition at the end of tenancy. [T.] can say this is your fault, I accept, but the building is getting older, wear and tear is okay, but I didn't leave any damage to the house. Why can [M.E.] charge everyone?

The Advocate said:

It states clearly that we went through a [move-in] CIR and there was a little damage and the rest of the house was perfect. The Tenant signed off, but when they moved out, it was in poor condition. He came over, and all he would say is 'Wear and tear, wear and tear, wear and tear'. So, I made a video with the date on it. I asked him a few times if we could do it without the RTB. I wasn't asking him to pay the full amount. I understand there was some wear and tear; it was not brand new. He just said 'wear and tear; I want my money back'. By that time, I've had the house painted. It was disgusting. I took a video and what I looked like after.

The Tenant said:

Just one thing I requested to [M.E.] was simple. I want to consult with [T.]. Then we did something that I will pay for what I did. But [T.] doesn't come. It is already past finished, so I don't want to pay before I leave.

#2 TENANT'S CLAIM

The Tenant applied for the return of his security deposit; however, the Tenant has requested compensation of \$3,355.00 from the Landlord, although, in the hearing, the Parties confirmed that the Tenant paid \$1,100.00 for the security deposit. The Tenant has provided no explanation in his application for the basis of the extra \$2,255.00 he has claimed, other than a brief statement: "The reason why it was recorded as \$3355 is the sum of \$1100 plus the cost of one month's rent compensation of \$2255."

The Tenant also claimed recovery of the \$100.00 Application filing fee from the Landlord.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

As set out in Policy Guideline #16, “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.” [emphasis added]

#1 LANDLORD’S CLAIMS

The Tenant’s main focus in his testimony was about the Landlord’s representative, [T.] not being present at the move-out inspection, as he said she was the one to do the move-in inspection with him. I find that a Landlord is entitled to send whomever he wants as his representative, and that it was unreasonable of the Tenant to dispute this. This is particularly appropriate when the Parties have a move-in CIR to compare to the state of the residential property at the end of the tenancy.

However, the Parties did not complete the move-out portion of the CIR as evidence of the condition of the residential property at end of the tenancy. Further, they did not submit photographs or videos showing the condition of the property at the end of the tenancy.

The move-in CIR indicated that the residential property was not in flawless condition at the start of the tenancy. The Advocate spoke of nail holes in the walls at the end of this tenancy; I find that nail holes in walls generally consists of reasonable wear and tear to a rental unit. I find that the Landlord did not provide sufficient evidence to demonstrate that he is entitled to compensation for the damage caused by the Tenant. There is no documentary or photographic evidence to support the Landlord’s verbal claims of the condition of the rental unit at the end of the tenancy.

Therefore, and pursuant to section 62 of the Act, I dismiss the Landlord’s claim wholly without leave to reapply.

#2 TENANT’S CLAIMS

Section 38 of the Act states that a landlord must do one of two things at the end of the tenancy. Within 15 days of the later of the end of the tenancy and receiving the tenant’s

forwarding address in writing, the landlord must: (i) repay any security deposit and/or pet damage deposit; or (ii) apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the Landlord does not do one of these actions within this timeframe, the landlord is liable to pay double the security and/or pet damage deposit(s) pursuant to section 38 (6) of the Act.

In the case before, me I find that the Parties agreed that the tenancy ended on July 31, 2021, and that the Tenant provided his forwarding address to the Landlord on August 9, 2021. Pursuant to section 38, this meant that the Landlord had until August 24, 2021, to apply for dispute resolution, if he had not returned the security deposit to the Tenant by that time. According to our records, the Landlord applied for dispute resolution on August 24, 2021, and so I find that he complied with section 38 of the Act as to the resolution of the security deposit.

Further, in the hearing, I read the details of the tenancy to the Parties, and they both confirmed that the rent was \$2,200.00 a month, not \$2,255.00. Further, the Tenant did not apply for extra compensation beyond the return of the security deposit in his application, which is inconsistent with the RTB Rules of Procedure. I find it would be administratively unfair to the Landlord for the Tenant to present a claim in the hearing that was not set out in the documents served to the Landlord prior to the hearing. As such, I dismiss the Tenant's claim for \$2,255.00 from the Landlord in this matter, pursuant to section 62.

However, I find that the Tenant is eligible for the return of his \$1,100.00 security deposit from the Landlord. Therefore, and pursuant to sections 38 and 67 of the Act, I award the Tenant with **\$1,100.00** from the Landlord for the return of his security deposit.

Given the Tenant's success in this matter, I also award him with recovery of his **\$100.00** application filing fee from the Landlord, pursuant to section 72 of the Act.

Summary

The Landlord failed to provide sufficient evidence to support his claim on a balance of probabilities; therefore, the Landlord's application is dismissed wholly without leave to reapply.

The Tenant was successful in his application for recovery of his \$1,100.00 security deposit and his \$100.00 application filing fee from the Landlord. The Tenant's other claim for \$2,255.00 is dismissed without leave to reapply.

I grant the Tenant a **Monetary Order** from the Landlord of **\$1,200.00** in recovery of the Tenant's \$1,100.00 security deposit and his \$100.00 application filing fee, pursuant to sections 67 and 72 of the Act.

Conclusion

The Landlord's claims are dismissed without leave to reapply, as the Landlord failed to provide sufficient evidence to prove his claims on a balance of probabilities. The Tenant is successful in his claim for recovery of the \$1,100.00 security deposit, and his \$100.00 application filing fee from the Landlord. However, the Tenant's claim for an extra \$2,255.00 is dismissed without leave to reapply, as the Tenant had not applied for this compensation in his application.

Pursuant to sections 38, 67, and 72 of the Act, I grant the Tenant a **Monetary Order** from the Landlord of **\$1,200.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 18, 2022

Residential Tenancy Branch