



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on June 20, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, for damage or loss under the Act; and,
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence package in November of 2021. No issues were raised with the service of those documents. The Tenant stated that she sent her evidence by registered mail on June 9, 2022. Tracking information was provided into evidence. The Landlord stated she received the package but only a couple of days before the hearing, and she did not have enough time to go through the documents properly. The Landlord could not recall the exact date the documents were received. Pursuant to section 90 of the Act, I find the Landlord is deemed to have received the Tenant's evidence package 5 days after it was mailed, on June 14, 2022. I note the Rules of Procedure (3.17) state that the Tenant must ensure the Landlord receives their evidence no later than 7 days before the hearing, which would have been no later than June 13, 2022. The Tenants evidence was not sufficiently served within the acceptable time frame, and I find this late service was prejudicial to the Landlord. I find the Tenant's evidence is not admissible, and will not be considered.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit or for damage or loss under the Act?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

Both parties agree that the tenancy started on June 1, 2019, and ended on August 18, 2021, which is the day the Tenant moved out and returned the keys to the Landlord. The parties agree that monthly rent was set at \$2,650.00 and was due on the first of the month, and the Landlord collected a security deposit in the amount of \$2,650.00. The Tenant rented a partially furnished rental unit, which is why the Landlord collected a security deposit equivalent to one month's rent. The Landlord still retains the deposit, in full.

There was a move-in inspection completed on June 1, 2019, and the move-in portion of the condition inspection report was completed and signed at that time. However, a significant portion of the writing on the move-in portion of this document is in a foreign language. No translation or explanation was provided as to what was written on this document.

At the end of the tenancy, the parties did not meet at a specified time, and conduct a formal move-out inspection, together. The Landlord conducted the move-out inspection on her own, sometime after the tenancy ended. The Landlord was not clear when this occurred. The Landlord did not provide any evidence showing how she attempted to schedule the move-out inspection, and that the Tenant was provided with a 2nd and final notice of final opportunity for inspection. The Landlord acknowledged getting the Tenant's forwarding address, in writing, on September 6, 2021.

The Landlord provided some photos into evidence, which are undated, but she asserts they were taken after the Tenant moved out.

The Landlord is seeking the following items:

- 1) \$200.00 – Move-in/out fee

The Landlord explained that this is an expense incurred with the strata for each move, and the Tenant is liable for this expense.

The Tenant agreed that she owes this amount and was willing to pay for it.

- 2) \$1,125.64 – General damages

The Landlord explained that the Tenant broke several items in the rental unit. The Landlord stated that this amount is comprised of:

- A) \$480.00 – Handyman services to repair general damage

The Landlord provided a copy of an invoice for the handyman services she paid to repair the damaged kitchen floor, the damaged kitchen cabinet doors/hinges, the dirty/damaged kitchen exhaust fan, the clogged bathroom sink, and the broken bathroom sink stopper. The Landlord pointed to the move-in portion of the condition inspection report to show that the rental unit was in good condition at the start of the tenancy, and that the Tenant is responsible for the above noted items. The Landlord provided photos which she asserts were taken after the Tenant moved out. Although the photos were undated and not time stamped.

The Tenant stated that all of what the Landlord is claiming is either normal wear and tear or pre-existing damage. The Tenant stated that she had several conversations with the Landlord about the issues with the sink and the flooring throughout the tenancy, and she feels she should not be liable for paying to repair these issues, since there were problems before she moved in.

- B) \$43.31 – sink stoppers and hinges

The Landlord stated that she had to replace the sink stopper in the washroom and some of the cabinet hinges, which the Tenant should be responsible for, since they were in good condition at the start of the tenancy. The Landlord pointed to the condition inspection report, the photos, and her receipt for this item.

The Tenant denied doing any damage to either of these items, and stated she only every used these items normally.

C) \$502.33 – Sofa

The Landlord explained that when the Tenant moved in, there was an older sofa that was included as part of the furnished rental unit. After the Tenant complained about the condition of the sofa in September 2019, the Landlord stated she bought a new sofa for the rental unit. This cost \$502.33, as per the receipt provided into evidence. The Landlord did not provide any photos of the sofa when it was new, or at the end of the tenancy. The Landlord asserts that the sofa had broken springs or hinges at the end of the tenancy and requires replacement after only being a year old.

The Tenant acknowledged that the Landlord bought a new sofa for the rental unit in September of 2019. However, the Tenant stated that at the end of the tenancy, there was nothing wrong with the sofa, and it was not damaged. The Tenant stated that it was only slightly “pilled” on the surface because it is fabric, but she denies it was broken.

D) \$100.00 – FOB replacement

The Landlord pointed to the move-in inspection report to show that she gave the Tenant 2 fobs at the start of the tenancy. During the tenancy, the Landlord stated she gave the Tenant a 3rd fob. The Landlord stated that at the end of the tenancy, the Tenant only returned 1 working fob, so she had to incur a \$100.00 fob replacement fee to so that she could ensure there were two functioning fobs.

The Tenant acknowledged that she was given 2 fobs at the start of the tenancy, but she stated that one of the fobs stopped working, so she had to ask the Landlord for a replacement. The Tenant stated that she was given a 3rd fob, and at the end of the tenancy, she stated she returned all 3 fobs, 2 working, and 1 not working. The Tenant stated it was not her fault that one of the fobs stopped working during the tenancy, as she did not abuse it in any way.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act.

Extinguishment

I note the following portions of Policy Guideline #17:

B. SECURITY DEPOSIT

7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*

[...]

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

3. *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;*
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;*
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- whether or not the landlord may have a valid monetary claim.*

4. *In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:*

- any arbitrator's monetary order outstanding at the end of the tenancy;*
- any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit (see example B below);*
- if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.*

In this case, I note the tenancy ended on August 18, 2021, the day the Tenant returned the keys and vacated the rental unit. I further note the Landlord filed this application for damage to the rental unit and to claim against the security deposit of \$2,650.00 on November 18, 2021. I have reviewed the testimony and evidence presented, and I find there is insufficient evidence to show that the Landlord offered the Tenant at least two opportunities for an inspection, in accordance with section 35(2) of the Act which states the following:

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

The Regulations also state the following:

Two opportunities for inspection

17 (1) *A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

(2) *If the tenant is not available at a time offered under subsection (1),*
(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

There is little to no evidence that the Landlord meaningfully and formally attempted to schedule a move-out inspection, and there is no evidence that the Landlord provided the Tenant with a second and final opportunity for inspection on the approved form, in writing (RTB-22, which is a Notice of Final Opportunity to Schedule a Condition Inspection). I find the Landlord breached section 35(2) of the Act and 17 of the Regulations in this regard.

I am not satisfied the Landlord was lawfully entitled to conduct the move-out inspection in the Tenant's absence. I find the Landlord extinguished their right to claim against the deposit by failing to give at least 2 opportunities for inspection, including a second and final opportunity, on the appropriate form.

Based on the above, I find the Landlord extinguished her right to file against the security deposit, and she was required to return the security deposit, in full, within 15 days of receiving the Tenant's forwarding address in writing, or the end of the tenancy, whichever is later. In this case, the latter of those two dates is September 6, 2021, which is also the date the Landlord acknowledged getting the Tenant's forwarding address in writing.

Since the Landlord did not return the deposit by September 21, 2021, I find the Landlord breached section 38(1) of the Act. Further, the Landlord also did not apply for this dispute resolution until November 18, 2021. Accordingly, as per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the amount of the security deposit.

Due to the Landlord's breach of the Act. I find the Tenant is entitled to $2 \times \$2,650.00 = \$5,300.00$.

Landlord's application

I will address the items in the same order as were laid out above.

- 1) \$200.00 – Move-in/out fee

I award this item, in full, as the Tenant agrees she is responsible for this amount.

- 2) \$1,125.64 – General damages

The Landlord explained that the Tenant broke several items in the rental unit. The Landlord stated that this amount is comprised of:

- A) \$480.00 – Handyman services to repair general damage
- B) \$43.31 – sink stoppers and hinges

The Landlord provided a copy of an invoice for the handyman services she paid to repair the damaged kitchen floor, the damaged kitchen cabinet doors/hinges, the dirty kitchen exhaust fan, the clogged bathroom sink, and the broken bathroom sink stopper. Although the Landlord pointed to the move-in portion of the condition inspection report to show that the rental unit was in good condition at the start of the tenancy, I note that a significant portion of the move-in condition inspection report is not in English, and is not translated. As a result, it is difficult to discern what the deficiencies were, in detail, at the start of the tenancy.

Further, and as stated above, I do not find the Landlord was lawfully entitled to conduct the move-out inspection in the Tenant's absence. I also do not find the move-out portion of the condition inspection report has been sufficiently completed in compliance with the Act and the Regulations, as noted above. Due to the significant amount of foreign language on the condition inspection report, and the fact it was not completed in accordance with the Regulations and the Act, I find it is not sufficiently reliable and helpful. I assign it no weight.

With respect to the photos provided into evidence by the Landlord, I note they are undated, and are not time-stamped such that I could know, with any degree of certainty, when they were taken.

I note the Tenant denies she should be responsible for any of the above noted items, and stated that all of the items were either damaged before (ie- kitchen flooring, cabinets), or that they broken under normal use (sink stopper). In any event, I note the onus is on the Landlord to demonstrate that it was the Tenant who caused the damage and that it was beyond reasonable wear and tear. I also note the Landlord provided no evidence to show how old any of the building components were, such that I could be satisfied there was any remaining useful life expectancy remaining. Overall, I do not find the Landlord has sufficiently demonstrated her claim, and I dismiss her application to recover the handyman expenses of \$480.00 for damages she asserts the Tenant caused, or for the sink stopper/hinges.

C) \$502.33 – Sofa

I note the Landlord replaced the sofa in the furnished rental unit sometime in September 2019, and that this cost \$502.33. I also note the Landlord stated that when the Tenant moved out, the couch was broken. The Landlord stated that it was springs or hinges that were broken, and the fabric was pilled. However, the Tenant denied that she broke the sofa, and stated that the only wear on the sofa was some minor “pilling” of the fabric, nothing more. I note the Landlord provided no photos or documentary evidence showing the condition of the couch at the end of the tenancy. I also find there is insufficient evidence showing that the couch was in fact broken as the Landlord asserts. The Landlord provided some photos of items in the rental unit, but no photos of the sofa. I dismiss this item, in full.

D) \$100.00 – FOB replacement

Both parties acknowledge that there were 2 “fobs” given to the Tenant at the start of the tenancy. It appears one stopped working part way through the tenancy, and the Tenant requested another one. The Landlord stated that at the end of the tenancy, the Tenant returned the 3 keys, but two of them were broken. The Landlord is seeking the cost of \$100.00 to replace the second key fob.

I note the Tenant states that she returned 2 working fobs, and only one of the fobs was broken. The Tenant asserts the one fob that stopped working was not her fault, and it simply stopped working under normal use during her tenancy.

Having reviewed this matter, I note the Landlord is generally responsible for providing at least one set of keys to the Tenant, at the start of the tenancy. However, the Tenant is also required to return those keys at the end of the tenancy. In this case, it appears the Tenant returned all 3 key fobs, but not all of them were working. The Landlord stated that two key fobs were broken, but the Tenant asserts it was only one fob that stopped working during the tenancy, under normal use. The onus is on the Landlord to demonstrate her claim on this matter, and I find there is insufficient evidence to show that the Tenant broken two fobs, out of the 3 she was given. Further, I also find the Landlord has failed to sufficiently demonstrate that the key fob was broken due to misuse or neglect on the part of the Tenant, and that it did not stop working due to age or normal use. I am not satisfied the Tenant is liable for this item, and I dismiss it, in full.

As the Landlord was substantially unsuccessful with her application, I decline to award the filing fee.

In summary, the Landlord is entitled to \$200.00 for the move-in/out fee, and the Tenant is entitled to \$5,300.00 for the Landlord's breach of section 38 of the Act. After offsetting these amounts, I find the Tenant is entitled to a monetary order in the amount of \$5,100.00.

Conclusion

The Tenant is granted a monetary order in the amount of **\$5,100.00**, as specified above. 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) and 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 21, 2022

Residential Tenancy Branch