



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes MNDL-S, FFL, MNSDB-DR, FFT

Introduction

The landlord seeks compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act"). By way of cross-application the tenant seeks the return (and doubling) of their security and pet damage deposits pursuant to section 38(6) of the Act. Both parties seek to recover the cost of the application filing fee under section 72 of the Act.

Both parties attended the hearing on August 12, 2022. The parties were affirmed, no service issues were raised, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties. It should be noted that, while the tenant submitted six documents to the Branch on his file, no copies of these were served on the landlord. As such, only the landlord's documentary evidence shall be considered.

Issues

1. Is the landlord entitled to compensation?
2. Is the tenant entitled to the return and doubling of the security and pet damage deposits?
3. Is the landlord or the tenant entitled to recover the cost of their filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began in early 2019 and ended on or about May 1 or May 2, 2022. Monthly rent was \$1,850.00 and the tenant paid a \$925.00 security deposit and a \$925.00 pet damage deposit. A copy of a written tenancy agreement was in evidence.

On June 25, 2021 the tenant's portable air conditioner malfunctioned, causing a water leak down through the ceiling and into the living room. The tenant promptly contacted the landlord who sent over a plumber. A plumber's report describes the source of the problem and the ensuing damage. The service call for the plumber cost the landlord \$269.85; a receipt for this is in evidence.

The tenant agreed that he would take care of the necessary repairs. A colleague of the landlord (who does repairs or construction work) gave him an estimate for repairs in the amount of \$1,749.45. The landlord forwarded the estimate to the tenant, who said he would take responsibility for having the work done. Over the course of the summer of 2021 the landlord reminded the tenant about the work needing to get done.

By the fall of 2021, the landlord was going through a divorce, and decided to sell the property. When asked about what was going on with the repairs, the tenant told the landlord that he couldn't afford them and that he was too busy to deal with it. The landlord had some difficulty selling the property because the potential buyers wanted conditions attached to the sale, related to the damaged ceiling.

Christmas came and went, with a few more showings of the property. On January 19, 2022, the landlord asked the tenant to repair the damage and the tenant refused. Because the landlord did not want a potentially hostile tenant on his hands while he was trying to sell the property, he decided to sit on it.

It is the landlord's understanding that he and the landlord had a verbal contract whereby the tenant had agreed to make the necessary repairs. Upon moving out, the tenant agreed that the landlord could retain \$850.00 of the security and pet damage deposits. While the landlord acknowledges that no condition inspection report was completed, he submitted that this dispute is not related to a claim against the deposits but rather has to do with damage and repairs that were the tenant's responsibility during the tenancy.

The tenant testified that he "agreed with everything [the landlord said], for the most part." The tenant spoke of being a very long-term tenant and that he has "nothing bad to say about" the landlord. He acknowledged and accepted "100%" that it was his air conditioner that caused the damage. However, he ultimately did not take care of the agreed-upon repairs because of his losing a quarter of his wages, the ongoing conditions caused by the pandemic, and other issues in his life. His main concern during this period was his survival, and that while he had the best of intentions to take care of the repairs, he simply could not afford it.

Analysis

1. Landlord's Claim for Compensation

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss?

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.

There is no dispute that the tenant breached the Act. Section 32(3) of the Act states that

A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

But for the tenant's admitted negligence the landlord would not have suffered a loss, both for the service call and for the estimate on repairs. The amount of the loss has been proven: \$2,019.30. (Indeed, based on the documentary evidence of the landlord, the state of disrepair of the ceiling had a causal, negative impact on the sale price of the property, which exceeds the amount claimed by the landlord. However, it can be said that the landlord mitigated his loss by subsuming the cost of repairs into the larger decreased in sale price.)

Taking into consideration all the oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that he is entitled to compensation in the amount of \$2,019.30.

In respect of who agreed to what in terms of the landlord keeping some of the security and pet damage deposit, the tenant advised in a text that the landlord could retain \$850.00. However, the landlord later told the tenant that he would be retaining \$1,000.00 and returning \$850.00. In all, the landlord has received from the tenant \$1,000.00 which covers about half of the amount awarded.

2. Condition Inspection Report and Landlord's Right to Claim against Deposits

While the landlord extinguished his right to claim against the tenant's security and pet damage deposits (pursuant sections 23 and 35 of the Act), it is worth noting that \$850.00 of the deposits were returned, and the tenant agreed to the landlord retaining \$850.00. Thus, the disputed difference amounts to \$150.00.

However, because it would make little practical sense for me to order the landlord to return this amount to the tenant, only to then order the tenant to pay the landlord this amount (in addition to the larger amount set out below), the landlord is ordered to retain the \$150.00 which he has, for all intents and purposes, already kept.

3. Landlord's Claim for Recovery of the Application Filing Fee

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee. In this dispute, as the landlord was successful, the tenant is ordered pay the landlord \$100.00 to cover the landlord's filing fee.

4. Summary of Landlord's Application

The landlord is awarded a total of \$2,119.30. As the landlord already has \$1,000.00 of the tenant's security and pet damage deposits in partial satisfaction of the total award, the tenant is hereby ordered to pay to the landlord the balance of \$1,119.30.

A monetary order in this amount is issued to the landlord, in conjunction with this decision. The landlord must serve a copy of the monetary order on the tenant.

5. Tenant's Application for Return and Doubling of Deposits

As noted above, the landlord may retain the \$1,000.00 security and pet damage deposits that he previously did not refund to the tenant. The tenant is not entitled to the return of any of this portion of the deposits that were not returned.

In respect of the doubling provision under section 38(6) of the Act, it is noted that the landlord made an application for dispute resolution within 15 days of the date that the tenancy ended. As such, the doubling provision

6. Tenant's Claim for Recovery of the Application Filing Fee

Because the tenant was not successful in his application his claim to recover the cost of the application filing fee must be dismissed.

Conclusion

The landlord's application is hereby granted.

The tenant's application is hereby dismissed, 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 Act.

Dated: August 12, 2022

Residential Tenancy Branch