



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNSDS-DR, FFT
Landlord: MNRL-S, MNDL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications regarding a tenancy.

On March 28, 2022 the tenant applied for:

- an order for the landlord to return the security deposit the landlord is retaining without cause; and
- the filing fee.

On April 19, 2022 the landlord applied for:

- a monetary order for unpaid rent, requesting to retain the security and/or pet damage deposit;
- an order for the tenant to pay to repair the damage they, their pets, or their guests caused during the tenancy, requesting to retain the security and/or pet damage deposit; and
- the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding the service of documents.

Issues to be Decided

- 1) Is the tenant entitled to the return of the security deposit?
- 2) Is the tenant entitled to the filing fee?
- 3) Is the landlord entitled to a monetary order for unpaid rent?
- 4) Is the landlord entitled to compensation from the tenant for damages caused during the tenancy?
- 5) Is the landlord entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. The tenancy began June 1, 2020; rent was \$1,500.00, due on the first of the month; and the tenant paid a security deposit of \$750.00, which the landlord still holds.

The tenant testified she vacated the rental unit on March 1, 2022.

The landlord's application indicates he is seeking \$750.00 because the tenancy was to have ended on February 28, 2022, but he did not receive the keys from the tenant until March 3, 2022.

The tenant testified that the tenancy was to end February 28, 2022, but that the landlord gave her permission to hand over the keys on March 2 or 3. Submitted as evidence is a February 14 text exchange between the parties in which the tenant told the landlord she planned to move out on March 1 and asked if it would be okay to hand over the keys on March 2 or 3, and the landlord replied: "That should be ok." The tenant testified that she did not realize that if she returned the keys on March 3 the landlord would consider them returned late.

The landlord's application indicates he is also seeking \$750.00 for damages made to the unit during the tenancy. The landlord testified that most of the repairs have been done, and that the amount of \$750.00 was a "quick estimation" of the cost to make repairs including damage to a granite counter, a glass stovetop, and broken drawers. The landlord testified that the unit was fully renovated about 6 months before the tenant

moved in. The landlord did not submit any receipts or professional estimates in support of his claim.

The tenant testified that she had informed the landlord there were some loose drawers which she had not repaired as she is “not handy.” The tenant testified that she had told the landlord that perhaps they could come to an agreement regarding the chipped counter.

The parties agree no move-in or move-out inspection was completed, that the tenant returned the keys on March 3, 2022, that the tenant provided her forwarding address in writing on March 8, 2022, and that the tenant did not agree in writing for the landlord to keep any portion of the security deposit.

Analysis

Unpaid rent

The parties agree that the tenancy was to end February 28, 2022.

The landlord testified he is seeking \$750.00 in unpaid rent because he did not receive the keys from the tenant until March 3, 2022.

The tenant testified that she vacated the unit on March 1, 2022 and that the landlord had given her permission to do so, and to hand over the keys on March 2 or 3. In support, the tenant submitted a text in which the landlord agreed to the tenant moving on March 1 and to receiving the keys on March 2 or 3. I accept the tenant’s testimony that she was not aware the landlord would consider the keys received late on March 3, 2022.

Based on the evidence before me, I find on a balance of probabilities that the landlord is not entitled to rent for March 2022 as the parties had a written agreement that the tenant could give the keys to the landlord on March 3, 2022.

Security Deposit

Section 24 of the Act provides that the right of a landlord to claim against a security deposit for damages is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the testimony of the parties, I find the landlord did not complete a move-in inspection report in accordance with section 23 of the Act, and consequently has extinguished his right to make a claim against the deposit for damages.

Section 38(1) states:

38(1) 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.

Section 38(6) states:

- (6) 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.

As the landlord did not repay or make a claim against the security deposit within 15 days of receiving the tenant's forwarding address in writing on March 8, 2022, I find the landlord is required to pay the tenant double the amount of the security deposit, pursuant to section 38(6). The tenant is entitled to a monetary award of \$1,500.00.

Damages

[Policy Guideline 17](#) includes that a landlord who has lost the right to claim against the security deposit for damage to the rental unit retains the rights to file a claim against the deposit for any monies owing for other than damage to the rental unit; and to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

The landlord testified he is seeking \$750.00 for damages made to the unit during the tenancy, including damage to a granite counter, a glass stovetop, and broken drawers.

The tenant testified that she had told the landlord about loose drawers and suggested that they could come to an agreement regarding the chipped counter.

Section 7 of the Act includes:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 includes:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance; and
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss.

As no inspection report was completed at the beginning of the tenancy, and the landlord has provided no professional estimates or receipts regarding damage, I find on a balance of probabilities that the landlord has failed to prove the amount of or value of the damage or loss.

Consequently, I find that the landlord is not entitled to compensation for damages.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is unsuccessful in his application, I decline to award him the filing fee. As the tenant is successful in her application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

I find the tenant is entitled to a monetary order in the amount of \$1,600.00, comprising \$1,500.00 for double the amount of the security deposit and \$100.00 for the filing fee.

Conclusion

The tenant is granted a monetary order in the amount of \$1,600.00.

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: January 05, 2023

Residential Tenancy Branch