



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MND, MNSD, FFL

Introduction

On June 11, 2022, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord’s agent (“the Landlord”) and Tenant attended the teleconference. The Tenant had two witnesses in attendance.

At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties confirmed that they have exchanged the documentary evidence before me. The Tenant testified that she had an opportunity to consider the Landlords evidence and respond.

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.

Preliminary and Procedural Matters

The Landlord’s agent withdrew two of his monetary claims for cleaning costs and damage to walls. He conceded that the rental unit was demolished after the Tenant vacated.

The Landlord’s application proceeded on the claims for garbage removal costs; gardening costs; and for the Landlord to keep a security deposit.

The Landlord and Tenant's testimony was not in agreement on the amount of a pet damage deposit being held by the Landlord. The Landlord testified that the pet damage deposit of \$800.00 was returned to the Tenant around September of 2020 after both of her dogs passed away. The Tenant testified that the Landlord only returned \$400.00 because she still had a cat.

The Landlord stated that the Tenant got another dog the next spring, and the Landlord asked for a pet damage deposit but the Tenant never paid one. The Tenant confirmed that she got another dog in August 2021, without asking permission because she is allowed pets under the tenancy agreement.

The Landlord and Tenant were invited to provide late documentary evidence to support their positions regarding the amount of a pet damage deposit that was returned. The parties were given two full days to provide their evidence. Neither party provided any evidence.

After further deliberation on the issue, it is the Landlord's application before me and since the Landlord is only making a claim to keep the security deposit; a claim to keep a pet damage deposit is not properly before me.

If the Tenant wants to pursue a monetary claim for the return of a pet damage deposit, the Tenant has liberty to apply for dispute resolution seeking compensation from the Landlord for the return of a pet damage deposit.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit?
- Is the Landlord entitled to keep the security deposit towards his claims?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on September 1, 2020, as a one year fixed term tenancy. Rent in the amount of \$1,634.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$800.00 and a pet damage deposit in the amount of \$800.00. The parties testified that the Tenant moved out of the rental unit on June 3, 2023

The Landlord is seeking compensation for the following items:

Garbage removal cost	\$450.00
Gardening	\$300.00

Garbage Removal

The Landlord testified that when the Tenant vacated the rental unit there was garbage left inside and outside of the unit. The Landlord hired someone to pick up the garbage and take it to the dump. The Landlord also stated that graffiti needed to be cleaned from the driveway of the property. The Landlord stated that the person hired was paid \$200.00 in cash and the dump cost was \$250.00. The Landlord does not have a receipt for the \$200.00 amount paid to the person hired or for the \$250.00 dumping fee. The Landlord provided 19 black and white photographs and 5 color photographs of the rental unit and yard.

In reply, the Tenant referred to the Landlords photograph of a stroller, garbage bags and a pickup truck. The Tenant stated that the stroller and garbage bags went into the truck and were removed from the property by the Tenant. The Tenant stated that she did leave behind a dishwasher; however, the Landlord agreed that she could leave it behind for the Landlord to dispose of. The Tenant stated that truck is owned by her witness Mr. A.W. who was present waiting to testify.

Mr. A.W. testified that it is his truck in the photograph and that all of the garbage was removed and taken away. He stated that the graffiti was only sidewalk chalk and that the rental unit was left clean.

The Tenant stated that when she disposed of her garbage at the dump the cost was only \$68.00 not \$250.00.

The Landlord's agent stated that the witness has an application against the Landlord and is biased.

The Landlord's agent did not refute the Tenant's testimony that she was permitted to leave the dishwasher on the property for the Landlord to dispose.

Gardening

The Landlord testified that the tenancy agreement has a term requiring the Tenant to keep the yard and landscaping in reasonable condition. He stated that it was the

Tenants responsibility to mow the lawn. The Landlord stated that when the Tenant vacated the lawn was approximately 18-20 inches high.

The Landlord stated that the city came by a gave a verbal warning regarding the condition of the yard. The Landlord testified that a person was hired in mid-June 2022, to mow the side yard and back yard at a cost of \$300.00. The Landlord paid the person \$300.00 in cash. The Landlord did not provide a receipt. The Landlord's photographs show the length of the lawn.

In reply, the Tenant testified that she would borrow the neighbor's lawnmower; however, she did not mow the lawn before she moved out. She stated that the Landlord was tearing the house down. She stated that city never knocked on her door.

The parties agreed that the size of the backyard is approximately 45 feet by 100 feet.

Security Deposit

The tenancy ended on June 1, 2022, by mutual agreement. The Tenant vacated the rental unit on June 3, 2022. The Landlord applied for dispute resolution on June 11, 2022, and made a claim against the \$800.00 security deposit.

The Landlord testified that a move out inspection and condition inspection report were not completed at the end of the tenancy.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant 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 Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss;
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Sections 23 and 35 of the Act provides that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Each section also requires that the Landlord complete the condition inspection report; both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 36 of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord does not offer an opportunity for an inspection and complete an inspection report in accordance with the regulations.

Based on the evidence before me, the testimony of the Landlord's agent and the Tenant, and on a balance of probabilities, I make the following findings:

Garbage Removal

I find that the Landlord provided insufficient evidence to support that the damage or loss exists. I find the Tenant provided the stronger evidence regarding the garbage that was on the property as shown in the photographs. I accept that the Tenant removed the majority of the garbage. In addition, the Landlord failed to provide receipts to prove the actual amount of having garbage removed and disposed of. I accept the graffiti was just chalk.

The Landlords claim for \$450.00 to remove and dispose of graffiti and garbage is dismissed without leave to reapply.

Gardening

I find that the tenancy agreement required the Tenant to maintain the lawn/ yard. The Tenant acknowledged that she had not recently mowed the lawn prior to vacating. I accept the Landlord's testimony and evidence that the lawn was overgrown. While the

Landlord has not provided a receipt, it is reasonable to accept that it would take time to mow a large yard of grass 18-20 inches high.

I find that the Tenant is responsible for the cost to mow the lawns. I find that that in the circumstances, it is reasonable to award the Landlord \$300.00 for the cost of mowing the lawns.

Security Deposit

The Landlord applied within 15 days of the tenancy ending to keep all or part of the \$800.00 security deposit.

The Landlord failed to arrange a move out inspection and complete a condition inspection report. The Landlord's right to claim against the security deposit is extinguished; however, under section 72 of the Act, if I order a tenant to pay a landlord an amount owing to the other, the amount may be deducted from any security deposit due to the Tenant.

I find that the Landlord is holding a security deposit in the amount of \$802.48 which includes interest.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a monetary claim in the amount of \$400.00.

I authorize the Landlord to retain the amount of \$400.00 from the deposits of \$802.48. I order the Landlord to repay to the Tenant, the balance of \$402.48.

I find that the Tenant is entitled to a monetary order for the balance of \$402.48. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord was partially successful with his claim for costs.

I authorize the Landlord to retain the amount of \$400.00 from the deposits of \$802.48 that he is holding.

I order the Landlord to repay the Tenant the amount of \$402.48 and I grant the Tenant a monetary order in the amount of \$402.48.

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: March 2, 2023

Residential Tenancy Branch