



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: MNDL-S, MNDCL-S, FFL
Tenant: MNSD, FFT

Introduction

The Landlord filed an Application for Dispute Resolution on August 16, 2022 seeking compensation for damage to the rental unit and other money owed. Additionally, they seek reimbursement of the Application filing fee.

On August 22, 2022 the Tenant applied for the return of the security deposit they paid to the Landlord at the start of the tenancy, and the filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “*Act*”) on May 9, 2023. Both parties attended the teleconference hearing. At the outset, each party confirmed they received the Notice of Dispute Resolution Proceeding and prepared documentary evidence from the other; on this basis the hearing proceeded at the scheduled time.

Issues to be Decided

Is the Landlord entitled to compensation for damage or other money owed from this tenancy, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the Tenant entitled to return of their deposits, pursuant to s. 38 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

The Tenant provided a copy of the tenancy agreement and both parties in the hearing confirmed the basic details. This tenancy started on September 1, 2019 after both parties signed the agreement on July 15, 2019. The Tenant paid a rent amount of \$1,800.

The Tenant paid a security deposit of \$900 and a pet damage deposit of \$450 on July 15, 2019. The Tenant in their evidence provided an image of the cheque they gave to the Landlord for that amount, dated July 18, 2019.

The Tenant in the hearing stated there was no move-in inspection at the start of the tenancy. The Tenant recalled having an initial reduced amount of rent with the agreement that they themselves would clean the rental unit to an acceptable level at the start of the tenancy.

The Tenant provided a written notice to the Landlord in March that they would be ending the tenancy. The end-of-tenancy date was set at June 30, 2022. In the hearing the Tenant recalled giving the Landlord a card with chocolate in March. This was their notice to the Landlord that they were ending the tenancy. At that time, they provided their forwarding address to the Landlord. The Landlord could not recall this specific gesture/information from the Tenant.

The Tenant moved out on June 30, 2022. The Landlord stated they had agreed to have a final meeting with the Tenant on July 1, 2022. According to the Tenant, the Landlord stated the rental unit was likely to be in good shape, and they accepted the rental unit keys returned from the Tenant. The Landlord described then noticing damage to the countertop in the kitchen, then attempting to chase the Tenant in order to further inquire.

The Tenant stated there was no formal move-out inspection meeting, and there was no documented condition inspection report.

After the tenancy ended, the Tenant sent an email to the Landlord to inquire on the return of their deposits. They recalled that damage to the counter occurred when the old dishwasher was removed, and that by the technician for that specific work. The

Tenant reiterated that there was no pet damage in the rental unit, owing to their caged bird. The Tenant provided their forwarding address to the Landlord in this email, dated August 1, 2022.

On their Application, the Landlord listed two amounts: \$1,000 for the kitchen countertop that was broken and a “white board” and a carpet wash and kitchen cleaning fee; \$1,000 for other monetary loss, with no description thereof.

The Landlord provided evidence to the Residential Tenancy Branch two days in advance of the hearing. One image shows the countertop damage above the dishwasher. The Landlord notified the Tenant of this by sending the image via text message. Another image shows the Landlord’s response to the Tenant’s query of their deposits, by forwarding a copy of the notice of this present Application via text message.

In the hearing, the Landlord stated they did not complete work on the countertop. They asked a repairman to come and inspect; however, the Landlord did not give a date when this inspection occurred. The Landlord noted the job was really expensive, so they did not undertake completion of repairs. When asked about the specific amounts of \$1,000 each, the Landlord stated “actually I really don’t know.” The Landlord also noted the home being really dirty at the end of the tenancy, and they undertook cleaning on their own and incurred costs for that.

Analysis

In any claim for compensation or loss, the Applicant has the burden to provide enough evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

The Landlord did not present any evidence to show the value of damage in the rental unit. Additionally, I find the Tenant explained the damage to the countertop as emanating from a dishwasher replacement.

The Landlord did not present evidence in the form of an estimate for work to be completed, or any other documentation to show the value of the work. The other \$1,000 in the Landlord's claim is completely unsubstantiated. I find the Landlord provided a rough estimate from what their impression was of the damage, with no record they had someone come to inspect the matter and provide a quotation for the work involved.

I find there is no evidence to establish the value of the damage. The Landlord provided no list of other amounts to show other monetary loss to them. There is no precise information on dollar amounts. I dismiss the Landlord's claim in its entirety for this reason.

I am also not satisfied that damage resulted from any action of the Tenant here. That is not proven in the evidence, and the text messages shows the Landlord was accepting of the Tenant's explanation. It was something outside of the Tenant's control on what is likely an older countertop that in any case exceeded its useful life cycle, judging from the single photo provided.

In addition, a landlord is obligated to complete a condition inspection report, as per s. 23 of the *Act*. I find the Landlord did not complete this required report. The consequence for no completed report is set out in s. 24 of the *Act*: the Landlord's right to claim against a security deposit or pet damage deposit is extinguished.

The same condition applied to the end of the tenancy without the Landlord meeting a final report requirement: s. 36 provides that a landlord may not claim against either deposit with no completed report.

Based on this, I order the full return of the deposits to the Tenant, forthwith. I grant the Tenant a monetary order for the full amount of the deposits: this is \$1,350.

There is no doubling of the deposit as per s. 38(6), with the Tenant only showing that they gave their forwarding address to the Landlord on August 1, 2022. The Landlord made their Application to the Residential Tenancy Branch within 15 days, as set out in s. 38(1).

As the Tenant was successful in their Application, I find they are entitled to recover the \$100 Application filing fee.

Conclusion

I dismiss the Landlord's Application in its entirety, without leave to reapply.

Pursuant to s. 38 and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,450.00 for the return of the security deposit, the pet damage deposit, and the recovery of the filing fee for this hearing application. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with the Monetary Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will 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 s. 9.1(1) of the *Act*.

Dated: May 9, 2023

Residential Tenancy Branch