



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlord: MND MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on June 29, 2023. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. The Landlord acknowledged receipt of the Tenant’s application package and evidence. The Tenant acknowledged receipt of the Landlord’s application package and evidence. I find both parties sufficiently served their documents.

All parties provided testimony and were 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 submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenant

- Is the Tenant entitled to the return of double the security deposit held by the Landlord?

Landlord

- Is the Landlord entitled to a monetary order for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that:

- monthly rent was \$1,375.00 and was due on the first of the month.
- The tenant moved out on or around August 14, 2022.
- The Landlord collected and still holds a security deposit in the amount of \$700.00
- The Tenant provided, and the Landlord received, the Tenant's forwarding address in writing on August 24, 2022.

Tenants' Application

The Tenants have applied for the return of double the security deposit, which total \$1,400.00. The Tenant asserts that the Landlord never completed a move-in or move-out inspection report on any sort of approved form. The Landlord loosely referred to a notebook he keeps with some of the particulars of the condition of the unit. The Landlord did not provide copied of any of condition inspection report. The Tenant stated he does not agree to any of the deductions made by the Landlord from the deposit.

Landlord's Application

The Landlord provided a typed documents showing that he is seeking the following items:

The holdback to repair and clean the following

\$190 clean carpet

\$175 wash all the walls to remove odour from smoke that put off alarms

\$125 remove grime on shower doors, clean toilet, mirror, wash walls

\$65 clean and repair stove

\$55 damage to door and nails in expensive wood on side of fridge

Total: \$610

The Landlord asserts that the Tenant had a fire on his stove and caused some smoked damage, which was difficult to clean up. He also stated that the Tenant did not clean up properly, and left stains in the carpets, dirty fridge, dirty shower. The Landlord stated that the Tenant also damaged the stove and some wood paneling. The Landlord stated that he spent 4 days cleaning the suite afterwards. The Landlord provided no supporting evidence showing the condition of the unit at the start or the end of the tenancy.

The Tenant stated he did not damage to the suite, and he states he cleaned the unit before he left. The Tenant is not sure what the Landlord is referring to in terms of damage.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The applicant bears the burden of proof to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Tenants' Application

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

Further, section 24 of the *Act* states:

- (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
- (a) *does not comply with section 23 (3) [2 opportunities for inspection],*
 - (b) *having complied with section 23 (3), does not participate on either occasion, or*
 - (c) *does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Based on the testimony of the parties, I find the Landlord failed to fill out a copy of the condition inspection report both at the start and the end of the tenancy, in accordance with the regulations.

Based on the testimony of the parties, I find the tenancy ended August 14, 2022, the day the Tenant moved out.

Based on the testimony of the parties, I accept that the Tenant provided their forwarding address to the Landlord on August 24, 2022.

Pursuant to section 38(1) of the *Act*, the Landlord would have had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security deposit or file a claim against it. However, the Landlord had extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 24 of the *Act* and therefore the Landlord was required to claim against the security deposit for something other than damage or return the security deposit to the Tenant within 15 days of September 8, 2022 (15 days after the forwarding address was provided). The Landlord did not claim against the security deposit for something other than damage or return the security deposit to the Tenant by

September 8, 2022, and therefore breached section 38(1) of the Act. I note the Landlord didn't file his application against the deposit until October 5, 2022.

Section 38(6) of the Act 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.

The Landlord did not comply with section 38(1) of the Act and therefore the Landlord cannot claim against the security deposit and must pay the Tenant double the amount of the security deposit of \$700.00, totalling \$1,400.00. Further, the landlord also owes interest on the deposit, but only for 2023, as there was no interest before that time. The interest on the deposit for 2023 is as follows:

2023 \$700.00: \$6.74 interest owing (1.95% rate for 49.31% of year)

Deposit interest is paid on the original deposit amount, which means the Landlord owes the Tenant \$1,406.74, for double the deposits, plus interest.

Further, I award the Tenant the recovery of the filing fee he paid in the amount of \$100.00, pursuant to section 72 of the Act, which means the Tenant is entitled to a monetary order for \$1,506.74.

Landlord's Application

Next, I turn to the Landlord's claim for monetary compensation. I note the Landlord is seeking \$610.00 for the following items:

The holdback to repair and clean the following

\$190 clean carpet

\$175 wash all the walls to remove odour from smoke that put off alarms

\$125 remove grime on shower doors, clean toilet, mirror, wash walls

\$65 clean and repair stove

\$55 damage to door and nails in expensive wood on side of fridge

Total: \$610

However, I find the Landlord has failed to provide any evidence to corroborate that the Tenant failed to clean, and that he damaged the unit as alleged, such as photos or a condition inspection report at the start and at the end of the tenancy. The Tenant denies doing any damage and asserts that he cleaned the unit. The onus is on the Landlord to prove his claim, and I find he has failed to do so. I dismiss the Landlord's application, in full.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$1,506.74**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants 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 30, 2023

Residential Tenancy Branch