



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNDC FF

Landlord: MND MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on August 11, 2023.

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages.

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 compensation for damage to the rental unit or for damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that:

- The tenancy began in November 2018, and that it ended on August 31, 2022
- The Landlord still holds \$1,047.50 as a security deposit
- The Tenant stated he never provided the Landlord with his forwarding address in writing for the purposes of the return of the deposit
- A move in and move out inspection was completed, and a report was completed

The tenancy ended by way of a mutual agreement to end tenancy (the mutual agreement), which was provided into evidence. This document also has a second page as an addendum to the mutual agreement. On the mutual agreement, the parties agreed to end the tenancy, and the Tenant would vacate the rental unit by August 31, 2022. Both parties signed this agreement, and the addendum. The addendum states the following:

The Landlord agrees to pay the Tenant the sum of Three Thousand One Hundred Forty Two Dollars and Fifty Cents, (\$3,142.50) as compensation for agreeing to end the Tenancy. Compensation to be paid upon the completion of the move out inspection, return of the unit in a clean undamaged condition and the keys are returned. Both parties agree that there will be no dispute resolution filed for this address. This document is legal and binding.

Tenant's application

The Tenant is seeking \$3,142.50 because the Landlord never paid the above noted amount after he moved out. The Tenant opined that he left the unit reasonably clean, as he did hire a cleaner to clean most things. However, the Tenant acknowledged that he damaged an interior door, and some wall surfaces and that he did not repair them before moving out.

The Landlord suggested that the entire mutual agreement is null and void because the Tenant failed to return the rental unit clean and undamaged, so she should not have to

pay the Tenant. The Landlord provided numerous photos of the unit showing the damage, and the areas of concern. The Landlord stated that she had to incur many expenses repairing and cleaning the rental unit after the Tenant left.

Landlord's application

The Landlord is seeking \$3,888.43 for a variety of items she had to repair and clean, as noted on the monetary order worksheet she provided. The Landlord spoke to each of these items separately, and the Tenants responded to those items. Receipts and photos were provided showing the damaged items, and the repairs that were completed.

Analysis

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

For each of the applications before me, 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.

Security Deposit

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

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.

However, in this case, the Tenant failed to provide his forwarding address in writing, and as such, I decline to award double the security deposit. The original deposit was \$1,047.50. Interest accumulates on this amount, but only starting 2023. The amount of interest due on this amount is \$12.49. This means the Landlord currently holds a deposit totalling \$1,059.99. This amount will be further addressed below.

Landlord's and Tenant's applications

I have reviewed the testimony and evidence relating to the Tenant's application, including the copy of the mutual agreement and the addendum. I note the Tenant moved out in accordance with the date on that agreement, on or around August 31, 2022. As a result, he is seeking \$3,142.50, which was the amount noted in the addendum. However, I note that the addendum to the mutual agreement places a condition on the payment of \$3,142.50 and states that it will only be paid "upon the completion of the move out inspection, return of the unit in a clean undamaged condition, and the keys are returned." It is undisputed that the Tenant left the unit somewhat damaged as he acknowledged breaking a door, and damaging the painted walls. As this was a condition required before payment, I find the Tenant is not entitled to payment of the above noted amount, as the requirements for compensation were not met.

Further, I have reviewed the testimony and evidence relating to the Landlord's application. I have also considered the mutual agreement and the related addendum. Although I made the finding above that because the Tenant failed to leave the unit clean and undamaged, which was the requirement necessary for payment to be due, I do not find the entire mutual agreement, the addendum, and all terms in it, are null and void.

I find the wording in the mutual agreement and addendum are important. In this case, there were several terms in the signed agreement. One of which was that the parties agreed to end the tenancy as of a certain date. This was coupled with a term that provided the Tenant with compensation in the amount of \$3,142.50, if he satisfied the criteria noted (completion of inspection, clean and undamaged unit, and keys returned). Although compensation was not triggered, because the Tenant did not leave the unit clean and undamaged, I find this does not negate or nullify the subsequent term the parties agreed to which states the following:

“Both parties agree that there will be no dispute resolution filed for this address. This document is legal and binding.”

I find this term applies to both parties, and it is binding, since it was not clearly indicated that it was a term conditional on other matters. I find both parties are precluded from applying for dispute resolution for these matters, as they specifically agreed to this. Both applications are hereby dismissed, without leave to reapply.

The Landlord must return the security deposit in the amount of \$1,059.99, forthwith.

Conclusion

The Tenant is granted a monetary order pursuant to Section 38 and 67 in the amount of \$1,059.99. This order must be served on the Landlord. If the Landlords fail to comply with this order the Tenant 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: August 15, 2023

Residential Tenancy Branch