



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNSD FF

Landlord: MND FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on August 13, 2024. 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 Tenants’ application package and evidence. The Tenants acknowledged receipt of the Landlord’s application package and evidence. I find all documents were sufficiently served.

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?

Background and Evidence

The tenancy started around September 4, 2023, and ended sometime around April 30, 2024, although the Tenant moved out a few days before this. The Tenant asserts he paid a security deposit of \$600.00 in cash to the Landlord, but didn't get a receipt. However, the Landlord denied getting this from the Tenant. The Tenant provided an ATM receipt showing he withdrew \$600.00. The Landlord stated that it was not until a while after the tenancy ended that he realized no deposit was paid.

The Tenant gave and the Landlord received the Tenant's forwarding address in writing, on April 27, 2024. The parties had some unsuccessful dialogue around the end of tenancy matters.

Tenants' Application

The Tenant has applied for the return of their security deposit, which total \$600.00.

Landlord's Application

The Landlord provided a monetary worksheet which shows he is seeking the following items:

<i>Document Number</i>	<i>Receipt / Estimate From</i>	<i>For</i>	<i>Amount</i>
#1	Merry Maids	Move out cleaning	\$250.00
#2	Proclean	Move out cleaning	\$252.00
#3	Refresh	Carpet cleaning	\$231.00
#4	SmithWerks Carpet and Upholstery Clea	Carpet cleaning	\$208.95
#5			\$
#6			\$
#7			\$
#8			\$
#9			\$
#10			\$
Total monetary order claim			\$450.00

Then, on the Landlord's application, he listed that he is seeking \$800.00 for 3 items, as follows:

"There was no effort in cleaning the property upon tenant's departure. The property was left at the end of the tenancy in a condition that does not comply with RTB standards. 2) Tenant did not provide monthly rent on time in two instances in which he was required to pay a \$25 late fee 3) Proper notice of end of tenancy was not provided to landlord by the tenant"

Then, during the hearing, the Landlord stated he is not looking for late fees but rather is looking for \$300.00 for his rental loss when he had to sign new tenants for a reduced rent amount.

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.

In this case, I am not satisfied there is sufficient evidence that a deposit was ever paid. I do not find a tenancy agreement (speaking to a deposit being due) and an ATM receipt for \$600.00 is sufficient to show that this money was ever actually given to the Landlord as a security deposit. The Landlord asserts he has no record of it, which is why no receipt was issued and he was dealing with several other tenancies at that time, so was more focused on rent, than deposits. Further, I note the Landlord did not become aware of not having a deposit on record until after the tenancy ended, and he had some unsuccessful conversations about the condition of the unit. Ultimately, I am not satisfied that a deposit was paid. As such, I dismiss the Tenant's request for the return of the deposit, without leave.

Landlord's Application

Next, I turn to the Landlord's claim for monetary compensation.

I find the Landlord has presented an unclear and confusing monetary claim. He listed that he is seeking \$800.00 on his application, then on his worksheet, he listed 4 items, totalling \$941.95, yet his total on the bottom of the form indicates his total monetary claim is \$450.00. The Landlord also spoke about rental losses, which were not included in the worksheet, and he also put late fees on his application, which do not appear to be included in any listed totals. I find the lack of clarity on this application is prejudicial to the respondent, and I find the Landlord has failed to sufficiently demonstrate the value of his loss in a clear and transparent manner.

Also, the Landlord stated that he didn't even incur the cleaning expenses noted on the worksheet, since he did the work himself. However, none of this was indicated on his application, nor was there any indication or itemization as to what work was actually done, and by who, such that any of those hours could be potentially compensated.

I find the Landlord failed to provide the full particulars of his claim, pursuant to section 59(2)(b), and his application is therefor dismissed, in full, with leave to reapply, except for the filing fee application, which is dismissed without leave.

Conclusion

The Tenant's application is dismissed, in full, without leave.

The Landlord's application is dismissed, in full, with leave.

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 13, 2024

Residential Tenancy Branch