



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlord: MNDC MNR MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord attended the hearing with her agent (collectively referred to as the “Landlord”). The Tenant attended the hearing on his own behalf.

Landlord’s application and evidence

The Tenant confirmed receipt of the Landlord’s Notice of Dispute Resolution Proceeding, which I find was sufficiently served. The Landlord stated that they included all their printed evidence in this same package. However, the Tenant stated they only got the Notice of Dispute Resolution Proceeding and no evidence was included in the package. The Landlord did not have any further proof of service showing what was included in the package. The onus is on the application to demonstrate service, and I find the Landlord has failed to sufficiently demonstrate they served their evidence in accordance with the Rules and the Act. I find the Landlord’s evidence is not admissible.

Tenant’s application and evidence

The Landlord confirmed receipt of the Tenants’ Notice of Dispute Resolution Proceeding and printed evidence. I find these were sufficiently served. The Tenant also served a USB stick with some video files on it, but the Landlord stated they were unable to open it. The Tenant asked, without a response, via text message and phone call if the Landlord could open the digital files. The Landlord denied getting any correspondence on this. Ultimately, I find the Tenant should have confirmed the Landlord had access to the digital files, in writing, and they did not. I find the digital files are not admissible.

All parties provided affirmed 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 unpaid rent or utilities?
- Is the Landlord entitled to compensation for money owed or 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 started on or around Septe 15, 2021, and ended on July 8, 2024, when the Tenants vacated the rental unit. Both parties also agree that monthly rent was set at \$2,958.00 and that the Landlord still holds a security deposit in the amount of \$1,450.00 and a pet deposit of the same amount.

Tenant's Application

The Tenant stated he is looking for double the security deposit because the Landlord breached her obligations under section 38 of the Act. The Tenant stated that he

provided his forwarding address by way of a letter to the Landlord on August 6, 2024, by registered mail. The Tenant provided proof of mailing. The Landlord confirmed receipt but did not recall when.

The Landlord made an application against the security deposit on August 24, 2024.

There was no move-in or move-out inspection report completed by the Landlord.

Landlord's Application

The Landlord is applying for the following items:

<i>Document Number</i>	<i>Receipt / Estimate From</i>	<i>For</i>	<i>Amount</i>
#1	RS Appliances LTD	Stove Replacement	\$ 450
#2	Hightech Windows & Blinds LTD	Blinds (destroyed by tenants pets)	\$ \$945
#3	Hood Fan Replacement	Hood Fan replacement (Standard size/stainless	\$ \$600
#4	Amazon & Home Depot	Door Knobs for install x2 Window parts	\$ \$120
#5	Handyman costs - Paid by Etransfer	Door knobs, cabinets, Railing Toilets	\$ \$368
#6	Tenants did not comply with rental increase starting June 1st, 2023 paid \$2920 monthly instead of \$2958 due monthly		\$ \$418 owed
#7	11 months x \$38 short monthly		\$
#8		(\$
#9			\$
#10			\$
Total monetary order claim			\$2900

The Landlord spoke to the above noted items and alleged that the Tenant damaged the stove, the blinds, the hood fan, door knobs, cabinets, railings, and toilet. The Tenant denies doing any of these damages, and asserts the issues were pre-existing.

The Tenant acknowledged the last item (#6) on the worksheet and agreed to pay the rental increase part of the claim, totalling \$418.00 for the last 11 months of the tenancy.

Analysis

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

Tenant's Application

With respect to the Tenant's application to recover double the security deposit, I find:

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, the evidence confirmed the Tenant sent their forwarding address, in writing, on August 6, 2024. Pursuant to section 90 of the *Act*, I find these were received by the Landlord 5 days later.

Therefore, the Landlord had until August 26, 2024, to either repay the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord filed their application on August 24, 2024. I find extinguishment does not apply, since the landlord filed this application for unpaid rent, on top of the damages, and extinguishment only applies to applications solely for damage to the unit. Accordingly, I find the Tenants are not entitled to recover double the amount of the security and pet deposit held by the Landlord.

The Landlord holds both deposits. Interest is payable on the deposits. The deposits, including applicable interest is \$3,024.13, which will be addressed further below.

Landlord's Application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

In this case, I find the first 5 items on the Landlord's worksheet are not sufficiently supported by the evidence. The Tenant denies doing any of the damages, and the Landlord has no admissible documentary evidence supporting these items. I find there is insufficient evidence these items were damaged by the Tenants. I hereby dismiss item 1-5 in full.

Next, with respect to the Landlord's claim for recovery of the rent, I find the Tenant is liable for \$418.00, as he acknowledges he owes this amount. I award item 6 in full.

I decline to award either party recovery of the filing fee, as both parties were partly successful.

In summary, I issue the monetary order as follows:

Tenant's application entitles him to:

- \$3,024.13 for the deposits

Landlord's application entitles her to:

- \$418.00

After offsetting these two amounts, I find the Tenant is entitled to a monetary order in the amount of \$2,606.13.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of \$2,606.13. This order must be served on the Landlord. If the Landlord fails 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: November 05, 2024