

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

MND, MNDC, MNSD, FF.

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the cost of repairs and the filing fee and to retain the security deposit in partial satisfaction of his claim. The tenant applied for the return of double her security deposit and the equivalent of four days rent as compensation for the landlord allegedly entering the rental unit, without notice, on March 28, 2009.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order to recover the cost of repairs and the filing fee? Did the tenant provide the landlord with her forwarding address in writing? Is the tenant entitled to the return of double her security deposit?

Background and Evidence

The tenancy started on January 01, 2007 and ended on March 31, 2009. The rent was \$435.00, due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$217.50. The landlord served the tenant with a notice to end tenancy for cause effective March 31, 2009. The tenant did not dispute the notice, and moved out prior to the effective date of the notice to end tenancy.

Tenant's Application

The tenant stated that she had moved most of her belongings out of the rental unit by March 26, 2009. She returned to the rental unit on March 28, 2009, to remove the balance of her possessions and to clean the unit. She stated that upon arrival at the unit, she found the landlord inside the unit, in the process of repairing the front door. The tenant stated that her key had broken inside the lock on March 22, but the dead bolt was still in operation and therefore the landlord had broken into the rental unit. The tenant stated that another occupant of the building witnessed the landlord using a crowbar to gain entry. She also stated that since rent was paid in full for March and that the landlord had forcibly entered the rental unit prior to March 31, without notice, the landlord owed her the return of the equivalent of rent for March 28 to March 31, 2009.

The tenant testified that she proceeded to remove the balance of her belongings and spoke with the landlord to make arrangements for her to return the next day to clean up. The tenant testified that since she had broken her ankle, she did not return to the rental unit after March 28, 2009.

The co tenant agreed that on March 25, 2009, he had spoken to the landlord regarding repair of the front door and told the landlord that he was unable to fix it himself. The tenant had also advised the landlord that he was responsible for the damage to the walls. The tenant admitted to having taken one area rug that belonged to the landlord.

The tenant stated that on April 01, 2009, she gave the landlord's agent her forwarding address and watched the agent fax it to the landlord, from the agent's place of work. The tenant stated that when she did not hear back from the landlord by April 20, 2009, she filed for the return of double the security deposit.

The tenant has filed evidence that consists of a handwritten account of events, as they happened. This note does not mention that she provided the landlord with her forwarding address in writing. The tenant is claiming double the security deposit plus \$58.00 which is the prorated rent for four days.

Landlord's Application

The landlord stated that on March 25, 2009, he had a conversation with the co tenant regarding the broken door. The tenant had agreed that he was responsible for repairing the door, but informed the landlord that he was unable to do so himself. The landlord advised the tenant that he would repair the door and the tenant agreed to pay for it.

The landlord made arrangements with the tenant to meet at the rental unit on March 28, 2009. The landlord stated that a visit to the rental unit involves a seven hour journey which includes two ferry rides. Therefore the landlord stated that he does not visit the rental unit without making prior arrangements with the tenant, to do so. The landlord stated that all communication is carried out via phone or email and he does not communicate by fax. The landlord denied having received the tenant's forwarding address.

The landlord stated that he arrived at the rental unit at approximately 2 p.m. on March 28, 2009 and the tenant was inside the unit in the process of moving her possessions into a moving truck. The landlord conducted the move out inspection with the tenant. The tenant refused to sign the report which indicates that there is damage to the main door, the walls and cupboard doors, writing on the walls and two missing rugs. The landlord made arrangements with the tenant for her to return the next day to clean up.

The landlord stated that the tenant returned the next day, intoxicated, picked up the broom and dustpan and smashed them against a wall, swore and left without cleaning the rental unit.

The landlord is claiming the following:

1.	Cost of repairs to the walls, cupboard doors, cleaning and garbage removal	\$265.00
2.	Replace the front door and lock set	\$478.00
3.	Replace two area rugs	\$140.00
	Total	\$883.00

The landlord has filed photographs of the damage to the rental unit and receipts for the cost incurred for repairs and cleaning. Re the area rugs, the landlord has not provided any evidence re the cost of the rug.

Analysis

Tenant's application:

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the tenant stated that she provided the landlord with a forwarding address by faxing it to him on April 01, 2009. The landlord denies having received a fax from the tenant and argued that he does not correspond by fax at all and conducts all communication with the tenant and his agent by phone or email. The tenant did not file any evidence to support her claim of having provided the landlord with her forwarding address and therefore, I find on a balance of probabilities that the tenant did not provide the landlord with her forwarding address in writing. Pursuant to section 38 of the *Residential Tenancy Act*, I find that the tenant is not entitled to the return of double the security deposit.

The landlord also testified and the co tenant agreed that they had had a phone conversation on March 25, 2009 and arranged to meet at the rental unit on March 28, 2009. I find that the landlord provided adequate notice to the tenant prior to visiting the unit and therefore the tenant's claim for the return of the equivalent of four days of rent is dismissed.

Landlord's application:

Based on the sworn verbal testimony and documentary evidence filed by the landlord, I accept the landlord's evidence in respect of the claim. I find that the landlord is entitled to \$265.00 for repairs and cleaning and to \$478.00 to replace the front door and lock set.

The landlord has not filed evidence to support his claim of \$140.00 for two area rugs that he alleges were taken by the tenant. Since the tenant admitted to having taken one of them, I award the landlord \$70.00.

Overall the landlord has established a claim for \$813.00 and since he has proven his case, he is entitled to the recovery of the filing fee of \$50.00.

I order that the landlord retain the security deposit of \$217.50 and interest of \$6.57 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$638.93. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$638.93**.

Dated July 27, 2009.

Dispute Resolution Officer