



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for a Monetary Order for damage to the unit and money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement, and for unpaid rent; to keep the security deposit; and to recover the filing fee associated with his application.

By the tenant: as an application for a Monetary Order for the return of double the amount of the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord provided 16 pages of late evidence, some of which included faxed photographs that could not be deciphered. The submission of late evidence is a clear violation of the Rules of Procedure. The landlord explained that the evidence was sent in response to the tenant's cross application that she received on April 21, 2012. The tenant filed her application on March 12, 2012, with proof of service that a copy was sent to the landlord on March 21, 2012. The landlord's receipt of the application a month after it was sent is at no fault of the tenant. Although I will not accept the landlord's late

evidence, I will however consider the landlord's testimony in response to the tenant's application at the hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to the return of the security deposit as claimed?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a verbal agreement, the tenancy started on April 15, 2012 and ended on January 15, 2012. The rent was \$1500.00 per month and the tenant paid a security and pet damage deposit totalling \$900.00. Condition inspection reports were not completed at the start or the end of the tenancy.

The landlord testified that the house was in impeccable condition at the start of the tenancy. She stated that she left the tenant and her co-tenant with several items such as a barbeque, a new portable air conditioner, and patio furniture. She stated that at the end of the tenancy, the barbeque was broken, there was graffiti on the fence, the security system was missing, and her fridge and stove were dented. The landlord submitted a monetary claim, which consists of estimates for repairs as follows:

- | | |
|-----------------------------|-----------|
| - Contracting work: | \$ 485.00 |
| - Portable Air conditioner: | \$ 413.28 |
| - Gardening: | \$ 476.00 |
| - Window replacement: | \$ 197.12 |
| - Window installation: | \$ 67.20 |

- NSF bank fees:	\$ 85.00
- Black sling for chair:	\$ 75.00
- Drapes with sheers:	\$ 130.00
- Ceiling fan:	\$ 83.99
- Unpaid utilities:	\$ 146.20
- Photographic prints:	\$ 13.98
- Sub-total:	\$2172.77

In her documentary evidence, the landlord provided 11 photographs, taken on or about January 17 or 18, 2012, in support of her claim for damages, showing in part; stained carpeting, a portable air conditioning unit in the yard; a number of small holes in the lawn; personal items left behind by the tenant; and 4 holes under an exposed portion of the kitchen counter. The landlord stated that the contracting work was to replace the urine stained bedroom carpet with laminate, and that the carpet was installed in 2006. The landlord stated that the tenant left the portable air conditioner outside under the elements; that the gardening work was done by the landlord over two days; and that the unpaid utilities with the accrued interest are now \$161.94.

The tenant testified that although the stains in the photographs were not there when the tenancy started, the carpet was already beyond repair when the tenancy started, and that the landlord said she would have it replaced. She said that she could not physically move the portable air conditioner downstairs, that the landlord had seen it outside and made no mention of it, and that she was not sure if it was working; she did agree that she could have been more diligent to ensure it was moved in a better location, outside exposure from the elements. She stated that there was damage to the yard but argued the landlord's claim is overstated. She said that the window never worked and was a pre-existing condition; that the drapes and sheers were in the house but not installed, and that she stored them in the basement; that she does not have the chair or the fan, and had no knowledge of them. She agreed to the NSF bank fees and the outstanding utilities.

The tenant stated that she sent the landlord her forwarding address by registered mail on January 20, 2012, but could not provide a tracking number. The landlord acknowledged receipt of the forwarding address, and stated filing the application for dispute resolution well within 15 days. The landlord said that the tenant and the co-tenant each paid \$450.00, and that when the co-tenant left, a new co-tenant moved in and took \$250.00 from the security deposit to pay the departing co-tenant's utilities, leaving a balance of \$700.00.

The landlord characterized the tenant's testimony as untrue; that no promise was made concerning replacing the carpet; and that the window and the air conditioner were working properly.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenant.

Sections 23(3), (4), and (5) of the Act are very specific and place the onus to complete condition inspection reports on the landlord, stating that they must be signed by both parties and that the landlord must give the tenant a copy of the report in accordance with the regulation. When a landlord fails to comply with these statutory requirements the Act states that the landlord's right to claim against a security deposit is extinguished. I find the landlord's documentary evidence of little value as it does not allow me to determine whether the unit was in any better condition when the tenants moved in than when they moved out, or to ascribe a monetary value for damages beyond reasonable wear and tear caused by this tenant, other than those conceded to by the tenant.

The *Residential Policy Guidelines* provide an estimated useful life for various items, including finishes in rental accommodations for reasonable wear and tear. In the case of carpeting that useful life is 10 years. Since the carpet was already 5 years old and had already lost approximately half of its useful life, I grant the landlord a nominal award of \$200.00 for the stains caused by the tenant.

Concerning the portable air conditioner, I find that the tenant was negligent and ought to have treated this unit more responsibly and I grant the landlord recovery for the full amount of \$413.28.

Concerning the gardening, the tenant agreed to damages; the landlord did the work rather than contracting it out. In the absence of receipts I grant the landlord \$320.00 (2days labour at \$20.00 per hour).

I grant the landlord recovery of the NSF bank fees of \$85.00, and the unpaid utilities with interest totalling \$161.94.

Other than the filing fee, there is no provision for a party to make a claim under the Act for litigation costs or any other costs related to an application for dispute resolution. Therefore I dismiss the landlord's claim for the cost associated with taking photographs.

Turning to the tenant's application for the return of the security deposit; the tenant did not provide sufficient evidence to prove that the landlord exceeded the statutory time frame to claim double the amount. The tenant testified that she sent the forwarding address on January 20, 2012; the landlord's application was filed on February 14, 2012. In the absence of more substantive evidence I am not persuaded that the filing date was beyond the 15 day period and I dismiss the tenant's application for the return of double the amount of the security deposit.

Since the landlord acquiesced to the new co-tenant's withdrawal of \$250.00 from the security deposit to pay unpaid utilities and did not re-claim that amount, I find that the security deposit is now \$700.00.

Conclusion

The tenant's application is dismissed. The landlord established a claim of \$1180.22. I authorize the landlord to retain the tenants' \$700.00 security deposit for a balance owing of \$480.22. Since the landlord's application had merit, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$530.22.

This Order may be registered in the Small Claims Court and 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: May 01, 2012.

Residential Tenancy Branch