Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC, MNR, MND, MND, FF

Introduction

The hearing was convened to deal with an application by the tenant for the return of double the security deposit under the Act. The tenant was also seeking reimbursement for the $50.00 fee paid for this application.

This Dispute Resolution hearing was also convened to deal with a cross application by the landlord for a monetary claim of $509.62 for utility charges and damages and reimbursement for the $50.00 fee paid for this application.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

At the outset of the hearing the landlord stated that the claim for the $289.62 cost of utilities was no longer relevant as the outstanding amount had been paid by the tenant.

Each party confirmed receipt of the other party's evidence. Neither party raised any issues regarding service of the application or evidence. I have reviewed all testimony and other evidence. However, only evidence relevant to the issues and findings in this matter are referenced in this decision.

Issues to be Decided for the Tenant's Application

Is the tenant entitled to return of double the security deposit under section 38 of the Act?

Issues to be Decided for the Landlord's Application

Is the landlord entitled to compensation under section 67 of the *Act* for loss of rent and other damages?

Burden of Proof: The burden of proof was on the tenant to establish that 15 days had expired from the time that the forwarding address was given, without the landlord either refunding the deposit or making an application to keep it. The landlord had the burden

of proof to show that compensation for damages and loss was warranted and supported by the evidence submitted.

Background and Evidence

The tenancy began in September 2011 with rent of $2,000.00. A security deposit of $1,000.00 had been paid. The tenancy ended on September 1, 2012 and the landlord had received the tenant's written forwarding address on or before the end of the tenancy.

The tenant testified that the landlord had only returned $500.00 of the tenant's security deposit and retained the remainder beyond fifteen days, after being given the tenant's written forwarding address. The tenant is therefore seeking a refund of double each deposit, pursuant to the provisions in section 38 of the Act.

A substantial amount of evidence was submitted by the landlord, including written testimony, email communications, photographs, statements, a copy of the tenancy agreement, information articles, invoices and a copy of the move-in and move-out condition inspection report. Only the move-in condition inspection report was signed by both of the parties.

The landlord testified that the tenant did not cooperate with her repeated efforts to verbally schedule the move-out condition inspection and she had to complete the move-out portion of the report without the tenant's participation. The landlord acknowledged that she did not serve the tenant with a Notice of Final Opportunity to Schedule a Move Out Inspection on the approved form.

The landlord testified that the tenant left damage in the unit and is making the following claims:

Half of Dishwasher Repair Cost	$205.00
Replacement Smoke Detectors	$59.21
Two Replacement Toilet Seats	$42.53

The landlord is also claiming compensation for :

Photocopies	$3.00
Cost of Registered Mail	$18.48

The landlord and tenant gave testimony and presented their evidence with respect to the claims below.

Dishwasher

In regard to the claim for the repair of the dishwasher, the landlord provided evidence to confirm that the tenant reported that the dishwasher was making a crunching noise on March 4, 2012. The landlord testified that she sent her regular "handyman" who examined the appliance within two days of the reported problem. The landlord testified that she told the tenants not to use the dishwasher in the meantime, until it was completely fixed. The landlord's handyman advised the landlord that the issue was beyond his ability to resolve and she needed to call in a specialist technician. The landlord testified that she followed up by contacting a dishwasher repair contractor who discovered that the there were a small metal discs rattling around in the machine. The landlord stated that she found out that these metal pieces had evidently come from the tenant's cutting board. The landlord testified that the contractor verified that the dishwasher had apparently been operated through repeated cycles allowing these loose items to cause additional damage to the appliance. The landlord's position is that the tenant had been negligent by operating the dishwasher after being told specifically not to do so and by ignoring the clanking noise that could clearly be heard.

In support of her allegations, the landlord referred to the evidence consisting of a written letter from the contractor dated March 10, 2012 which contained the following handwritten statement:

> "*The motor & housing of the above dishwasher has now been replaced. The damage was caused by some type of metal foreign object placed in the dishwasher. The damage would be recent. (less than two months)"*

The landlord also provided a second typewritten letter dated March 10, 2012, signed by the contractor that stated:

> *"Re: Kenmore Dishwasher Repair – Model 587-1514-205*
>
> *The motor and housing of the above dishwasher has now been replaced. The damage was caused by a metal foreign objects placed in the dishwasher. This damage appears to be recent. The foreign objects made a hole in the plastic housing and caused a water leak. The parts found in the housing were rotating together and were not part of the Dishwasher."*

The landlord is claiming half the cost of the handyman and technician's repairs totaling $205.00.

The tenant denied ever using the dishwasher after being told not to do so. The tenant also disagreed that the written assessments from the contractor contain adequate proof to confirm that the tenants used the dishwasher during the few days it took to repair it. The tenant stated that the appliance was not functioning properly so no dishes could be done. The tenant testified that they had complained about water leaking from the

dishwasher prior to the report made on March 4, 2012, and the landlord merely directed them to run a cycle through the dishwasher using Tang to cleanse the system and to wipe around the seal.

Smoke Detectors

The landlord stated that the tenant had removed two smoke detectors and they could not be reinstalled as the “plates” were missing. The landlord testified that these alarms were only one year old and had to be replaced at a cost of $59.21. The landlord submitted a receipt showing the purchase of one smoke detector and one carbon monoxide detector. The landlord made reference to email dated December 2, 2012 from the new renters that confirmed the landlord’s statement that 2 smoke detectors had been removed.

The tenant testified that during the tenancy, they had been advised by a fire marshal that the existing smoke alarms were not adequate and were not placed in the optimum spots for protection. The tenant testified that they purchased and installed different alarms, including a carbon detector that was not supplied in the suite, and removed these before vacating. The tenant testified that they gave the old alarms to the incoming tenants so they would have the choice of either having them installed properly or replacing them with more effective alarms. The tenant disputed that any parts were missing from the original alarms.

Toilet Seats

The landlord testified that the tenant had left two toilet seats damaged with cracks. According to the landlord the seats were of high quality and would not be damaged through normal wear and tear. The landlord submitted a photo of one of the damaged seats and stated that the other one had a “hairline crack” that could not be clearly photographed. The landlord also submitted a receipt for the purchase of two new toilet seats totaling $42.53, which is being claimed.

The tenant acknowledged that one of the toilet seats had been cracked, but maintained that they were not misused and that the damage occurred in the normal course while the tenant was doing a final cleaning and accidently let the seat drop closed. The tenant stated that she had consented to reimburse the landlord for the value of the used toilet seat up to a maximum of $30.00.

Analysis: Tenant’s Application

The tenant made application for the return of the security deposit and section 38 of the Act deals with this issue. Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

- repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations OR
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord returned a portion of the tenant's security deposit in the amount of $500.00 leaving $500.00 still being held in trust by the landlord on behalf of the tenant. I find that the landlord applied to retain the security deposit on September 14, which was within the 15-day deadline to do so.

Analysis: Landlord's Application

In regard to the landlord's claim for monetary damages, an applicant's right to claim damages from the other party is covered under, Section 7 of the Act which states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount of , and order a party to pay, compensation to the other party.. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

With respect to the claims for repairs, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In establishing whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit‘s condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party’s signatures. Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord admitted that the move-out condition inspection report was completed in the tenant’s absence. I find the failure to comply with sections 23 and 35 of the Act function to lessen the weight of the landlord’s evidence about the end-of-tenancy condition.

However, I do accept that the dishwasher was damaged. Under the Act, the repairs and maintenance of major appliances is solely the responsibility of the landlord except where damage was caused by the deliberate or negligent actions of the tenant.

In this instance I find that the landlord has not sufficiently proven that the tenant had been negligent. I find that the appliance was used for the purpose of washing dishes and the evidence of both parties verified that the tenant did dutifully report malfunctions to the landlord. I find that the claim for the dishwasher fails to satisfy the test for damages and must be dismissed.

In regard to the toilet seat damage, I find that the landlord’s evidence clearly showed that one of the seats had a crack, but insufficient evidence was submitted to prove the damage to the second toilet seat. Given that the tenant did confirm that one of the seats had been damaged by an incident that happened during the tenancy and consented to reimburse the landlord for the value of the replacement toilet seat, I find that the landlord is entitled to receive the pro-rated value of the used toilet seat. Based on the receipt, I find that the landlord is entitled to be reimbursed in the amount of $7.27.

In regard to the replacement of the smoke alarms, I find that the landlord submitted proof that she purchased one smoke alarm and also a carbon monoxide alarm. However, while this proves that the amount claimed was spent, which satisfies element 3 of the test for damages, I find that the landlord has not sufficiently met the criteria to meet element 2 of the test for damages. I also find that the landlord conducted the move-in condition inspection in the absence of the tenants after they had vacated and

the move out inspection report only mentions missing screws and batteries. Given the above, I find that the portion of the landlord's claim for the smoke alarms must be dismissed.

In regard to the landlord's claim for the costs of photocopying and mailing, I find that, with the exception of the cost of filing the application, reimbursement for any other costs incurred in preparing for the Dispute Resolution Hearing, are not compensable expenditures covered under any provision of the Act and will not be considered.

Based on the testimony and evidence presented during these proceedings I find that the landlord is entitled to total monetary compensation of $7.27 for the toilet seat.

I find that the tenant is entitled to monetary compensation in the amount of $550.00 comprised of $500 refund of the security deposit and the $50.00 cost of the tenant's application.

In setting off these two awards, pursuant to section 72 of the Act, I hereby grant a monetary order in favour of the tenant in the amount of $542.73. This order must be served on the landlord by registered mail or in person and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

Each party is partially successful in their applications and , after setting off the two awards, the tenant was granted a monetary order for the remainder of the tenant's security deposit.

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: December 05, 2012.

Residential Tenancy Branch