



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF
 MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenant.

The Landlord filed on January 3, 2013, seeking a Monetary Order for: damage to the unit, site or property; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for her application.

The Tenant filed on January 30, 2013, to obtain a Monetary Order for: the return of double the balance owed on his security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for his application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be granted a Monetary Order?
2. Should the Tenant be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: her written statement; the tenancy agreements; photos; the move-in and move-out condition inspection report form; a cheque issued to the Tenant; an envelope which the Tenant signed December 17, 2012; e-mails between the parties; a cheque written for cleaning; a receipt for the purchase of a faucet and light bulbs; a plumbing invoice.

The Tenant submitted documentary evidence which included, among other things, copies of: his written statement; tenancy agreements; photos; the move-in and move-out condition inspection report form; a cheque issued to the Tenant; an envelope which the Tenant signed December 17, 2012; e-mails between the parties; a cheque written for cleaning; a receipt for the purchase of a faucet and light bulbs; a plumbing invoice. He confirmed the move out inspection report document was a copy of photos he had taken with his cell phone the day of the inspection.

The parties agreed the Tenant has occupied the rental unit since November 26, 2012, under consecutive fixed term tenancy agreements. The last tenancy agreement began on December 1, 2012, was set to end on February 28, 2013, and included a clause which allowed the Tenant to end the tenancy prior to the end of the fixed term. Rent was payable on the first of each month in the amount of \$1,600.00 and on October 23, 2010 the Tenant paid \$800.00 as the security deposit. The tenancy ended December 2, 2012. The move in condition inspection report form was completed on November 26, 2010 and the move out form was completed December 2, 2012.

The Landlord testified that the first time she received the Tenant's forwarding address was by e-mail on December 21, 2012 and she filed her application to keep the security deposit within 15 days of receiving that e-mail. She asked for his address during the inspection but he did not provide it. She did not pursue acquiring his address because he made arrangements to return the pool chips to her building and stated he would pick up his security deposit at that time. He returned the pool chips and picked up the cheque on December 17, 2012, signing the envelope in acknowledgement.

The Landlord pointed to the move out inspection report form where the Tenant initialled and signed acknowledging his responsibility to pay for two days rent (December 1st and 2nd) at \$103.00, grout cleaning in both bathrooms, plus cleaning of the kitchen cabinet and microwave. She hired a cleaning person who gave her a flat rate of \$200.00 to complete the required cleaning. After the kitchen was cleaned the Landlord noticed damage to the kitchen faucet and a couple of burnt out light bulbs so she purchased the replacement items and hired a plumber to install the faucet. The Landlord described the faucet damage as being "worn out or the silver peeling off as if acid or some other chemical was poured on the faucet.

The Landlord stated she rounded off the cost of the items, kept \$500.00 for payment of the items, and returned \$300.00 to the Tenant. The items claimed included the following:

- \$103.00 December 1 and 2nd, 2012 rent
- \$103.03 for the cost of the faucet and light bulbs
- \$100.80 for the cost of the plumber
- \$200.00 for the cost to clean the rental unit

The Tenant stated that he gave the Landlord his forwarding address during the move out inspection. He pointed to an e-mail he sent on December 21, 2012, where he made reference to giving his address during the inspection and then listed it again to show the Landlord it was the same address. He does not have evidence to prove he gave the address to the Landlord on December 2, 2012 but claimed he wrote it on a piece of paper she gave him during that meeting.

The Tenant confirmed that he had agreed to pay for two days rent (December 1st and 2nd) at \$103.00, grout cleaning in both bathrooms, plus cleaning of the kitchen cabinet and microwave. He disagrees with the \$200.00 being claimed for cleaning and argued that given the size of the kitchen and small area of grout that needed cleaning it should have only cost \$100.00.

The Tenant denies responsibility for the damaged faucet. He argued that it was not noted on the move out condition form nor did he see such damage during his tenancy. He pointed to the date of the Landlord's refund cheque (December 15, 2012) the dates of: the cleaning cheque (December 12, 2012); the receipts where she purchased the supplies (December 18, 2012); and the plumbing receipt dated January 30, 2013. He argued that the damage occurred after his tenancy ended. He stated that the damage probably occurred while the faucet was being cleaned; therefore, he could not be held responsible for it. Also, the light bulbs probably burnt out after his tenancy ended because there were no burnt out light bulbs noted on the inspection form.

In closing, the Landlord claimed the faucet was filthy dirty and covered in dried food which covered the damage. That is why the damage was not noted on the move out inspection form. She confirmed she did not receive the address during the move out inspection.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and

2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's Claim

Upon consideration of the evidence before me I find there to be insufficient evidence to prove the Tenant provided the Landlord his forwarding address in writing prior to his e-mail dated December 21, 2102. The parties had established e-mail as a normal form of communication; therefore, I find this tenancy ended December 2, 2012, and the Tenant provided the Landlord his forwarding address, in writing, on December 21, 2012.

The Landlord filed her application for dispute resolution on January 3, 2013, thirteen days after receiving the forwarding address, and within the required timeframes set out in Section 38 of the Act.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 21 of the Regulation stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case the Landlord is seeking damages for the kitchen faucet and light bulbs which were not listed on the move out condition form. The Tenant disputes that the damages were caused during his tenancy and argued that they were caused several days after when the unit was cleaned.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the foregoing, I find there to be insufficient evidence to prove the faucet was damaged or that the light bulbs burnt out during the tenancy. Accordingly, I dismiss the Landlord's claim for material \$103.03 plus plumbing of \$100.80, without leave to reapply.

Section 37(2) of the Act provides 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.

The parties agreed that the Tenant signed and initialed the move out condition report form agreeing to pay \$103.00 for December 1st and 2nd, 2012, rent plus the cost to clean the kitchen cabinets, microwave, and bathroom grout. I accept the Landlord's evidence that she was quoted and paid a flat rate of \$200.00 to complete the cleaning.

Based on the aforementioned I find sufficient evidence to prove the Tenant breached section 37(2) of the Act, leaving the rental unit unclean at the end of the tenancy.

As per the foregoing I find the Landlord has met the burden of proof and I award them rent and damages in the amount of **\$303.00** (\$103.00 + \$200.00).

The Landlord has been partially successful with her application; therefore I award partial recovery of the filing fee in the amount of **\$30.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

December 1 st and 2, 2012 rent & cleaning	\$303.00
Filing Fee	<u>30.00</u>
SUBTOTAL DUE LANDLORD	\$333.00
LESS: Security Deposit \$800.00 + Interest 0.00	<u>-800.00</u>
SUBTOTAL Due Tenant:	- 467.00
LESS: Amount refunded to Tenant Dec. 17, 2012	<u>300.00</u>
Offset amount due to the Tenant	-\$167.00

The Landlord is hereby ordered to return the \$167.00 balance to the Tenant forthwith.

Tenant's application

The Tenant has filed for the return of double the balance owing of his security deposit arguing that the Landlord did not file her application within 15 days of receiving his forwarding address and because he was not e-mailed a copy of the move out inspection form.

Upon review of the evidence pertaining to receipt of the move out inspection report form, I accept the Landlord's submission that the Tenant told her that he did not need a copy sent by e-mail because he was taking a picture with his phone. The Tenant's submission supports he had taken a picture with his phone.

As stated above, I found the Landlord received the Tenant's forwarding address on December 21, 2012, and she made her application within the 15 days stipulated under section 38 of the Act. Accordingly, I find there to be insufficient evidence to prove the Tenant is entitled to return of double the balance owed on his security deposit and the claim is dismissed, without leave to reapply.

The Tenant has not been successful with his application; therefore, he must bear the burden of the cost to file the application.

Conclusion

The Landlord is entitled to withhold \$333.00 from the security deposit held in trust, and is Ordered to return the balance due to the Tenant in the amount of **\$167.00**. The Tenant has been issued a Monetary Order in the amount of \$167.00. If the Landlord fails to comply with this Order the Tenant would be at liberty to serve the Landlord with the Monetary Order.

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

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: March 26, 2013

Residential Tenancy Branch

