



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNDC, MNSD, FF
MNSD

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit.

The parties both attended the hearing and each gave affirmed testimony. The landlord was also accompanied by a person whom the landlord introduced as a co-landlord, however that person did not testify or take part in the proceedings. The parties also provided evidentiary material in advance of the hearing, and were given the opportunity to question each other respecting the testimony and evidence, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically travel costs, costs for preparation of hearings, and costs of service?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for all or part or double the amount of the security deposit?

Background and Evidence

The landlord testified that this tenancy began on February 1, 2013 and ended on October 31, 2014. Rent in the amount of \$850.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of a 1-page Addendum to the tenancy agreement has been provided, but not the entire tenancy agreement. The rental unit is a 1 bedroom semi-detached building under the deck of the landlord's residence.

The landlord further testified that the landlord was successful in obtaining an Order of Possession effective November 30, 2014, however the tenant gave the landlord verbal notice sometime between mid-October and October 28, 2014 that the tenant would be moving out at the end of October.

The landlord also testified that a move-in condition inspection report was completed by the parties at the commencement of the tenancy and a copy has been provided. The parties did not complete a move-out condition inspection report. On or about January 12, 2015 the landlord received the tenant's forwarding address in a letter dated January 8, 2015.

The landlord claims damages to the rental unit and has provided an expense summary worksheet claiming the following expenses:

- \$87.49 for a new kitchen faucet which was new at beginning of tenancy and left completely broken at the main stem where it enters into the countertop at the end of the tenancy. A copy of a receipt has been provided and the landlord testified that a standard faucet was purchased. The move-in condition inspection report shows that it was new at the commencement of the tenancy.
- \$265.83 for kitchen counters and the landlord testified that both countertops had to be replaced at the end of the tenancy due to broken arborite. The tenant's chairs were on wheels with metal frames, and the landlord assumes they consistently hit the arborite. The countertops were not repairable. A short extension piece also had to be replaced in order for the counters to match. The same standard countertop was purchased.
- \$37.60 for paint purchased; the rental unit smelled very bad when the landlord obtained possession and cleaned all ceilings and walls with strong cleaners and couldn't get rid of the smell. Some rooms, such as the bedroom, kitchen bathroom and living room had to be painted.
- \$53.44 for more paint, SOS pads and caulking.
- \$38.69 for more paint, sanding blocks and rollers.
- 36.48 for more paint.
- \$11.20 for deadbolt repair; the landlord testified that the knob has a screw missing and the knob came right off. The landlord had to take the deadbolt off, take it to the locksmith and get a screw put in.
- \$57.65 for gasoline purchases. The landlord travelled to the U.S. to purchase some items which were less expensive in that Country.
- \$50.00 for recovery of the filing fee for the hearing in October, 2014.

- \$5.00 for recovery of the cost of a Freedom of Information and Protection of Privacy request. The landlord testified that the RCMP were at the rental unit several times and the landlord had to get the information to support the landlord's application for an Order of Possession. The information obtained through that request, along with a claim for damages were submitted to the Arbitrator at that hearing in October, 2014.
- \$12.92 for postage for serving documents for the previous hearing.
- \$47.88 for advertising. The landlord testified that the rental unit was re-rented in January, 2015 for one month, then re-rented again commencing February 1, 2015, but the rental unit was vacant for November and December, 2014. The landlord testified that it was difficult to get renters during Christmas time.
- \$352.80 for installing the new countertop and an invoice has been provided. The landlord testified that a local quote to provide the countertops and install was over \$1,000.00 which is why the landlords went to the U.S.
- \$560.00 for painting the rental unit after the tenancy had ended. The landlord testified that he and his and co-landlord had to fix a few things on walls and in some places the paint was rubbed off. The landlords had to clean, sand, and prime where required, painted, then sealed the cracks between the wall and molding.
- \$360.00 for some patching.

The landlord further testified that he spent 2 whole days in the rental unit cleaning and trying to get rid of the smell, but had to paint the whole rental unit, not just a few walls. It takes a long time to do the preparation work and paint. The smell was a very rank, musty smell and totally rendered the suite un-rentable.

The landlord claims \$1,551.98 in total costs against the tenant.

The tenant testified that at the previous hearing the Arbitrator told the tenant he could move out at any time prior to the agreed move-out date of November 30, 2014.

The tenant agrees that the countertops were chipped by the tenant's chairs, but the tenant's concern is the cost.

The tenant also stated that new paint seems overboard and questions the amounts claimed by the landlord.

The tenant further testified that the deadbolt fell off repeatedly and believes that a screw had a thread in it when the tenant moved out. The landlord stated that it couldn't be put back on because there was no thread left, but the tenant denies responsibility for that.

The faucet in the kitchen had been damaged for weeks and the tenant repeatedly asked the landlord to repair it, once in writing, but having received no response, the tenant called the landlord. However, the landlord claimed that the tenant broke it on purpose in July or August, 2014. The tenant also had a repair fellow look at it and was told that the landlord wouldn't pay for the repair.

The tenant also denies the landlord's claim for the RCMP information request. The police were called twice by the landlord and once by the tenant due to a party the landlord had on the deck which was right over the tenant's unit.

The tenant agrees with the landlord's testimony that the tenant's forwarding address in writing was provided to the landlord in a letter dated January 8, 2015 which he agrees would have been received by the landlord on or about January 12, 2015. The tenant seeks an order for return of the security deposit.

Analysis

The *Residential Tenancy Act* states that if a landlord fails to ensure that the move-in and move-out condition inspection reports are completed, the landlord's right to claim against the security deposit for damages is extinguished. In this case, the landlord testified that no move-out condition inspection report was completed, and I find that the landlord had opportunity to schedule it with the tenant. Therefore, I find that the landlord's right to claim against the security deposit for damages is extinguished.

The *Act* also specifies that a landlord must return to a tenant any security deposit held in trust within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing or apply for dispute resolution claiming against the deposit within that 15 day period. The parties agree that January 12, 2015 was the date the landlord received the tenant's forwarding address in writing, and having found that the landlord's right to claim against the deposit for damages is extinguished, the landlord's only option was to return the security deposit to the tenant in full within 15 days or make a claim against it for something other than damages. The landlord has not done so, and where the landlord fails to comply, the landlord must repay the tenant double, and I so order.

However, the landlord's right to make a claim for damages is not extinguished. Where a party makes a monetary claim against another for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to reduce such damage or loss.

I have reviewed the evidentiary material, particularly the move-in condition inspection report, the photographs and receipts, and I find that the landlord has established all elements in the test for damages for the following:

- \$87.49 for a new kitchen faucet

- \$265.83 for kitchen counters
- \$166.21 for paint and supplies purchased ($\$37.60 + \$53.44 + 38.69 + \$36.48 = \166.21)
- \$352.80 for installing the new countertop

With respect to the landlord's claim for \$11.20 for deadbolt repair; there is some discrepancy with respect to thread-bear, and I find that to be normal wear and tear for which the tenant is not responsible.

With respect to the landlord's claim of \$57.65 for gasoline purchases to travel to the U.S. to purchase some items which were less expensive in that Country, I am not satisfied that the landlord has established that the difference between the gasoline costs and items purchased in Canada mitigated any loss, and the landlord's application for gasoline costs is dismissed.

With respect to the landlord's claims of \$5.00 for recovery of the cost of a *Freedom of Information and Protection of Privacy Act* request and \$12.92 for postage for serving documents for the previous hearing, the *Residential Tenancy Act* provides for costs related to filing an application for dispute resolution, and I find the costs claimed are administrative costs of a landlord and not recoverable against a tenant under the *Act*.

I find no basis for the landlord's claim of \$47.88 for advertising. I accept the landlord's testimony that the rental unit was vacant for November and December, 2014, and that it was difficult to get renters during Christmas time, but I fail to see how advertising a rental unit for rent after a tenant vacates is the responsibility of a tenant.

With respect to the landlord's claim of \$50.00 to recover the cost of filing the application for dispute resolution that was heard in October, 2014, if the landlord had been successful, that order would have been made by the Arbitrator at the time, and I decline to make any orders with respect to that hearing.

With respect to the landlord's claim of \$560.00 for his time painting the rental unit the landlord testified that he and the co-landlord had to fix a few things on walls, clean, sand, and prime where required, painted, then sealed the cracks between the wall and molding. The landlord also claims \$360.00 for some patching and other labor, and quotes a total of 46 hours at \$20.00 per hour on the expense summary provided. I find that amount to be excessive, and note that some of the work appears to be duplicated. The landlord also testified that he spent 2 whole days on repairs and cleaning. I accept 18 hours at \$20.00 per hour for the landlord's time and I find that the landlord has established a claim for labor to repair damages over and above normal wear and tear in the amount of \$360.00.

In summary, I find that the tenant is entitled to monetary compensation for double the amount of the security deposit, or \$850.00 and the landlord is entitled to monetary compensation for damages and loss in the amount of \$1,232.33. I order that the amounts be set off from one another and I grant a monetary order in favour of the landlord for the difference in the amount of \$382.33.

Since both parties have been successful with the applications, I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$382.33.

This order is final and binding and may be enforced.

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: August 31, 2015

Residential Tenancy Branch

