



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 92 minutes in order to allow both parties to fully present their submissions. I note that the majority of the hearing time was used by the tenant to present his submissions and evidence.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

The landlord confirmed that she received the tenant's written evidence package on March 14, 2016, which is less than 7 days prior to this hearing, not including the hearing date and contrary to Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*"). The landlord confirmed that she reviewed the evidence and was prepared to proceed with this hearing, as she had no objection to me considering the tenant's evidence. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's written evidence package. I considered the tenant's entire written evidence package at the hearing and in my decision, as per the landlord's consent.

At the hearing, I advised the tenant that I could not consider his five pages of written evidence regarding dissolved companies, because the landlord had not been served with it, as required by Rule 3.1 of the RTB *Rules*.

Issues to be Decided

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The tenant confirmed that he began his tenancy at the rental unit in July 2013 with a different landlord. The current landlord named in this application then bought the rental unit from the former landlord. Both parties agreed that they entered into a new written tenancy agreement and that this tenancy began on July 15, 2015. Monthly rent in the amount of \$2,250.00 was payable on the 15th day of each month. A security deposit of \$1,125.00 was paid by the tenant and the landlord obtained this deposit when she became the landlord and she continues to retain this deposit.

The tenant confirmed that a move-in condition inspection report was completed by the former landlord when he moved in to the unit. Both parties agreed that a move-out condition inspection report was completed on January 17, 2016 and that the tenant provided a written forwarding address on this report. The landlord confirmed that the tenant agreed to a deduction from his security deposit, although no amount was given, after three quotes were to be provided by the landlord. The landlord filed her application to retain the deposit on January 29, 2016.

The landlord seeks to retain the tenant's entire security deposit of \$1,125.00 for repainting damage to walls, as well as steam cleaning carpets, cleaning the fireplace and replacing light bulbs. The landlord provided an email receipt of \$525.00 for carpet cleaning, fireplace cleaning and the missing light bulbs. The landlord provided copies of three estimates for painting in the amount of \$1,650.00, \$1,500.00 and \$1,345.00. The tenant disputed all of these estimates, saying that one was provided by the landlord's father's company, one was from a dissolved company, and one was from the cleaners of the unit who did not see the unit as requested before providing the estimate. The tenant said that all estimates were for general not specific painting of damage to the unit. The landlord provided photographs of the holes and patch marks in the rental unit.

The landlord said that she did not know how old the carpets and paint were at the unit, while the tenant said the carpets were replaced just before he moved in.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

RTB Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I award the landlord \$50.00 in nominal damages for carpet cleaning of the rental unit. Residential Tenancy Policy Guideline 1 states that after a tenancy of one year, the tenant is required to either steam clean or shampoo the carpets. The landlord said that the carpets were dirty, smelled and she only saw the tenant vacuum before he vacated. The tenant lived in the unit for more than one year. I find that the tenant did not provide documentary proof such as a receipt to show that he completed shampooing of the unit, even though he claimed that it was done by the person he hired to clean before vacating. Accordingly, I find that the landlord is entitled to the above award as a reasonable amount from the \$525.00 total invoice provided.

I award the landlord \$4.00 in nominal damages to replace four light bulbs at the rental unit. The tenant agreed to pay \$1.00 per light bulb for the four missing bulbs that he said he left when vacating. The landlord did not provide an itemized breakdown of how

much the light bulbs cost, as she only provided a receipt for \$525.00. Therefore, I award the cost that the tenant agreed to pay.

I award the landlord nominal damages of \$5.00 to clean the fireplace at the rental unit. The landlord provided a photograph of the fireplace after the tenant vacated. The landlord did not provide an itemized breakdown of how much the fireplace cleaning cost, as she only provided a receipt for \$525.00. The tenant agreed that the fireplace was messy when he left but he said he only left one burnt log in the fireplace and the landlord caused the remaining mess. As per Residential Tenancy Policy Guideline 1, the tenant is required to leave the unit in a clean state when vacating and he failed to do so for the fireplace, by his own admission.

I award the landlord nominal damages of \$200.00 for painting of damage to walls in the rental unit. The landlord provided move-in and move-out condition inspection reports for this tenancy, showing that the walls were in good condition when the tenant moved in and that the tenant agreed that he caused damages to the walls at the end of the tenancy. The tenant acknowledged that he caused mainly nail holes in the walls but they were not excessive. The tenant agreed that he was responsible for two large wall patches requiring painting in the upstairs hallway and master bedroom. Both parties produced photographs of the damaged areas. Residential Tenancy Policy Guideline 1 states that the tenant is responsible for repairing and painting nail holes if there is an excessive amount and where there is damage caused negligently or willfully. I find that the tenant caused damage to the walls beyond reasonable wear and tear, including the two large patches that the tenant agreed to, as well as large holes in the bathroom and laundry room areas, and other smaller holes around the rental unit. However, I find that the landlord's estimates for painting are excessive and appear to be for repainting the entire unit, as part of general renovations. As the landlord did not provide a specific itemized breakdown and only provided general areas of the unit that were to be repainted, I award the above reasonable amount for repainting the damaged areas.

As the landlord was mainly successful in her Application, I find that she is entitled to recover the \$50.00 filing fee from the tenant.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or

losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)). I find that the landlord applied to retain the deposit on January 29, 2016, within 15 days of the end of the tenancy and the written forwarding address being provided on January 17, 2016.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the landlord is entitled to retain \$309.00 from the tenant's security deposit in full satisfaction of the monetary award.

Conclusion

I order the landlord to retain \$309.00 from the tenant's security deposit in full satisfaction of the monetary award. I order the landlord to return the remainder of the tenant's security deposit in the amount of \$816.00 to the tenant.

I issue a monetary Order in the tenant's favour in the amount of \$816.00 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: March 29, 2016

Residential Tenancy Branch

