



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC MNSD FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for the return of double his security deposit, for money owed or compensation for damage or loss under the *Act*, plus the recovery of the cost of the filing fee.

The tenant, the landlords and an agent for the landlord (the "agent") appeared at the teleconference. The parties gave affirmed testimony. During the hearing the parties presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The hearing commenced on May 17, 2016 and after 61 minutes was adjourned for the purposes of providing sufficient time to hear evidence from the parties. An Interim Decision was issued dated May 24, 2016 that should be read in conjunction with this Decision. On August 10, 2016, the hearing reconvened and after an additional 83 minutes the hearing concluded.

The parties confirmed receiving documentary evidence from the other party and having had the opportunity to review that evidence prior to the hearing.

Issues to be Decided

- Is the tenant entitled to the return of double his security deposit under the *Act*?
- If the tenant is entitled to monetary compensation under the *Act*, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on August 1, 2013 and ended on January 31, 2015 when the tenant vacated the rental unit. Monthly rent of \$1,000.00 was due on the first day of each month. A security deposit of \$500.00 was paid by the tenant, which the landlords continue to hold.

The tenant has claimed \$2,913.67 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Double the return of security deposit	\$1,000.00
2. Landlord's disposal of personal property (wood)	\$229.34
3. Termination of services (extra fridge and freezer)	\$416.98
4. Restriction of parking	\$42.35
5. Restriction of facilities (storage room)	\$800.00
6. Loss of quiet enjoyment	\$425.00
TOTAL	\$2,913.67

Regarding item 1, the landlords did not dispute they received the tenant's written forwarding address on December 18, 2014. The male landlord (the "landlord") indicated that he did not return the tenant's security deposit as the tenant left the rental unit completely dirty and left garbage in the rental unit. The landlords did not dispute that they did not have the written permission to retain any portion of the tenant's security deposit. The landlords did not complete a move-in or move-out condition inspection report during the tenancy.

Regarding item 2, the tenant has claimed for \$229.34 for the recovery of the cost of his personal property of firewood on the property. The tenant confirmed that he did not have any tenant's insurance and the landlord disputed that he disposed of the tenant's firewood and that he advised the tenant to remove the firewood from the property. This item was dismissed during the hearing as the fact that the tenant neglected to carry tenant's insurance does not prove a breach of the Act on the part of the landlords and fails to meet part one of the test for damages or loss which will be discussed later in this Decision.

Regarding item 3, the tenant is claiming \$416.98 for loss of an additional fridge and freezer that was in a storage room, which the landlords disputed was included in the monthly rent and was not an area provided as part of the tenancy. The parties each provided their own version of what was included in the tenancy agreement. The written tenancy agreement indicates "Refrigerator" in the singular and there is no mention of a second freezer or refrigerator being included in the monthly rent. Both parties referred to various e-mails submitted in evidence. The tenant confirmed that he has no written permission to use the extra refrigerator and freezer and that the permission was given orally by the landlord. The landlord disputed that he gave oral permission for the tenant to use the extra fridge and freezer. The landlord referred to receipts submitted in support of this portion of the tenant's claim that date back to 2011 and 2012 and yet the claim was made in October 2015.

Regarding item 4, the tenant is claiming \$42.35 for the restriction of parking services. The tenant stated that he wants compensation for being asked to move out from the covered parking space. The landlord testified that there was no assigned parking and that the tenancy agreement did not specify covered parking being provided. The tenancy agreement submitted in evidence indicates parking for 1 vehicle. The landlord stated that the covered parking is not

beside the rental unit and that every other tenant that has rented where the tenant rents parks in front of the rental unit in an uncovered parking space and not in the covered parking space. The landlord denied that permission was ever given to the tenant to exclusively use the covered parking space and stated that when the landlord was at the property, the landlord would park in the covered parking space. The tenant denied that the landlord would park in the covered parking space. The tenant stated that he placed a value of \$10.00 per month on the covered parking space and is seeking \$42.35 in compensation for being denied the covered parking space.

Regarding item 5, the tenant stated that he is seeking \$800.00 in compensation for the restriction of the use of the storage room and that he would rely on the same evidence as he presented for item 3 above.

Regarding item 6, the tenant is seeking \$425.00 for loss of quiet enjoyment and referred to several emails submitted in evidence. The tenant referred back to the firewood as part of the reason why he was claiming for item 6, which has already been dismissed. The tenant states that there was an oral agreement regarding the firewood which the landlords vehemently denied. The landlords also referred to several emails submitted in evidence in support of his position. The tenant testified that he arrived at \$425.00 calculated at \$100.00 per month, which is 10% of the monthly rent, multiplied by 4.25 months. The tenant claims that the landlord is disingenuous and was harassing him by making him park in the uncovered spaces and restricting his use of the extra refrigerator and freezer and that the landlords' behaviour was punitive. The landlords vehemently deny being punitive with the tenant and that he was ensuring that the tenant knew that he was limited to what the tenancy agreement stated and nothing additional.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

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.

Item 1- There is no dispute that the landlords received the tenant's written forwarding address on December 18, 2014 and failed to complete a move-in and move-out condition. The landlords did not have written permission from the tenant to retain any portion of the tenant's security deposit and the landlord did not submit a claim to retain the tenant's security deposit. Furthermore, pursuant to section 24 and 36 of the *Act* the landlords had already extinguished all rights to claim against the tenant's security deposit as the landlords failed to complete a move-in and move-out condition inspection report as required by section 23 and 35 of the *Act*, respectively. Therefore, section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing.

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[my emphasis added]

In the matter before me, I find that the landlords breached section 38 of the *Act* by failing to return the tenant's security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing on December 18, 2014. Therefore, I find the tenant has met the burden of proof and is entitled to the return of double the original security deposit of \$500.00 for a total of **\$1,000.00**. I note that the tenant's security deposit accrued \$0.00 in interest since the start of the tenancy.

Item 2 - As indicated above, I find the tenant has failed to meet the burden of proof by proving part one of the test for damages and loss as indicated above. Therefore, this portion of the tenant's claim is **dismissed without leave to reapply**.

Items 3 and 5 – As the tenant is relying on the same evidence related to both of these portions of the tenant's claim I will address them together. Where the parties dispute an alleged verbal agreement, the terms of the written tenancy agreement stand in full force and effect. In the matter before me items 3 and 5 were highly contested between the parties and there was certainly no agreement by the landlords that a verbal agreement was entered into and as a result, I find the tenant has failed to meet the burden of proof for both of these portions of his monetary claim as the tenant has the burden of proof. The tenant has failed to meet part one of the four-part test for damages or loss and as a result, **I dismiss items 3 and 5 without leave to reapply** due to insufficient evidence.

Item 4 – I have reviewed the tenancy agreement submitted in evidence which indicates parking for 1 vehicle and does not specify covered parking as a term of the tenancy agreement. I have also taken into account that the landlords dispute the tenant's testimony that verbal permission was given for the tenant's exclusive use of the covered parking space. After considering the evidence before me and comparing that to the written tenancy agreement, I find the tenant has failed to meet part one of the test for damages or loss. Therefore, **I dismiss** this portion of the tenant's claim **without leave to reapply** due to insufficient evidence.

Item 6 – I find that this portion of the tenant's claim relates to what the tenant claims be harassment by the landlords related to items 2, 3, 4, and 5 which have all been dismissed above. As a result and consistent with my findings on items 2, 3, 4 and 5, I find the tenant has failed to meet the burden of proof and has provided insufficient evidence to support the first part of the four-part test for damages or loss. As a result, this portion of the tenant's claim is **dismissed without leave to reapply**, due to insufficient evidence.

As the tenant was successful with a portion of his monetary claim, I grant the tenant the recovery of **\$25.00** of the \$50.00 filing fee.

I ORDER the landlords to comply with sections 23 and 35 of the *Act* in the future which require a move-in and move-out condition inspection report to be completed.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$1,025.00**, comprised of \$1,000.00 for the doubled security deposit, plus recovery of \$25.00 of the cost of the filing fee. I grant the tenant monetary order pursuant to section 67 of the *Act* in the amount of \$1,025.00.

Conclusion

The tenant claim for item 1 is successful. Items 2, 3, 4, 5, and 6 are dismissed.

The tenant has been granted a monetary order under section 67 of the *Act* in the amount of \$1,025.00 as described above. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 29, 2016

Residential Tenancy Branch