



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties acknowledged receipt of each other's documentary evidence.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

Is the tenant entitled to a monetary order for compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on May 15, 2006 and ended on March 31, 2017. Condition inspection reports were conducted at move in and move out. The tenants were obligated to pay \$1400.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$700.00 security deposit. The tenant testified that a written condition inspection report was conducted at move out but when he signed the form it was not filled in. The tenant testified that he trusted the landlord "like a father" and did not review the document. The tenant testified that he didn't realize that he had signed and agreed that the landlord was entitled to retain the deposit. The tenant testified that the unit was left in good condition and that he should receive his deposit back. The tenant testified that he and the landlord had a "verbal" agreement to paint the suite. The tenant testified that he was helping the landlord out by finding, hiring and paying a painter to paint the suite. The tenant testified that the verbal agreement was that they would each pay 50% of the cost. The tenant seeks the return of double the security deposit in the amount of \$1400.00, \$1000.00 for the landlords share to cover the painting costs and \$100.00 for the filing fee for a total claim of \$2500.00.

The landlords gave the following testimony. The landlords adamantly dispute that there was any arrangement for them to pay half the cost to paint the unit. The landlords testified that the tenant caused a kitchen fire which damaged much of the paint from the smoke and flames. The landlords testified that the

tenant was responsible to fix the damage and paint the suite. The landlords testified that the tenant only painted a portion of the suite and not the whole amount as agreed. The landlords testified that the unit had severe damage from neglect as well as smoke damage. The landlords testified that because they had a long and positive relationship with the tenant they agreed to only retain the security deposit and not pursue any further claims. The landlords testified that the condition inspection report was filled out and noted that the tenant agreed to relinquish his deposit to the landlords. The landlords testified that the tenant should not be entitled to anything.

Analysis

While I have turned my mind to all 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 tenant's claim and my findings around each are set out below.

I address the tenants' claims and my findings as follows.

Painting - \$1000.00.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the tenants own testimony he acknowledged that he did not have any supporting documentation to support this claim. The landlord adamantly disputed this claim. As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the tenants must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Based on the insufficient evidence before me, I dismiss this portion of the tenants claim.

Security Deposit - \$1400.00.

In the tenants own testimony he does not dispute that the he signed the condition inspection report at move out. The tenant submits that he trusted the landlord and did not review the document. The tenant further submits that the form was blank when he signed it. The tenant was unable to provide sufficient evidence disputing that he signed and agreed that the landlord was entitled to retain the deposit. The landlord provided the signed document to support their position that the parties agreed that the landlord would retain the deposit and seek no further claims. The landlords testified that; in their minds, the matter had been resolved and closed. The document clearly reflects the testimony as provided by the landlord. Based on the above, I dismiss this portion of the tenants' application.

The tenant has not been successful in their application.

Conclusion

The tenants' application is dismissed in its entirety.

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: November 14, 2017

Residential Tenancy Branch