

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 01, 2009. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on September 06, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to an Order under sections 67 and 72 of the Residential Tenancy Act?

Background and Evidence

The Fixed term tenancy began on December 1, 2006, converted to a month to month tenancy after November 30, 2007 and ended on July 31, 2009. Rent was payable on the first of each month in the amount of \$1,700.00 and the Tenant paid a security deposit in the amount of \$850.00 on November 30, 2006. A move-in inspection report was completed on December 01, 2006 and a move-out inspection was completed on July 31, 2009. Both reports were completed in the presence of the Tenant and signed

by both the Landlord and the Tenant. The rental building is approximately seven years old.

The Landlord is seeking to keep the security deposit and interest as partial satisfaction of their claim for compensation for the following items:

- \$2.00 for a replacement washer knob
- \$120.00 to replace all vinyl window blinds which have been in the unit for 7 years
- \$272.00 for costs to clean the rental unit. The Resident manager testified that it took her husband and her sixteen hours to clean the rental unit
- \$300.00 to plaster and paint the entire rental unit which was done by the resident handyman. The Landlord did not know when or if the rental unit had previously been painted.
- \$40.00 to repair the cracked door frame which was completed by the resident handyman.
- \$600.00 to replace the carpet in the living room, dining room, hallway and two bedrooms which was completed by the resident handyman.
- \$50.00 to change the deadbolt on the entrance door which was completed by the resident handyman. The Landlord testified that the Tenant had changed the deadbolt without the Landlord's permission as supported by the picture evidence, and had to be changed back to the Landlord's deadbolt.
- \$10.00 to install eleven burnt out light bulbs and was completed by the resident handyman.
- \$25.00 to replace the missing filter/fan cover in the exhaust fan above the stove.

The Landlord testified that they were withdrawing their request for an additional \$100.00 for replacement key tags/fobs as they were returned by the Tenant.

The Landlord advised that the evidence was submitted by the head office and that she could not provide testimony as to why there were no copies of invoices in the evidence to prove the cost of the replacement items in support of their claim.

Analysis

I find that in order to justify payment of damage or loss under sections 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent Tenant in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Landlord's right to claim damages from the Tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The Landlord provided affirmed testimony that her and her husband, who are the resident managers, spent sixteen hours cleaning the rental unit. The Landlord has claimed the sixteen hours cleaning at \$17.00 per hour for a total of \$272.00. In the presence of the testimony and documentary evidence, I find that the Landlord's claim for cleaning to meet the test for damage and loss, as listed above, and I hereby approve the Landlord's claim in the amount of \$272.00.

I note that the remainder of the Landlord's claim, in the amount of \$1,147.00, involves the purchase of materials and or labour to complete the required repairs. I note that the Landlord failed to provide evidence of the actual costs incurred in the purchase of such materials and/or labour and proof that the work was completed. As a result the Landlord has failed to prove the test for damage or loss, as listed above and I hereby dismiss the Landlord's claim of \$1,147.00 for the above noted repairs.

As the Landlord has been partially successful with their claim I hereby award the Landlord recovery of the \$50.00 filing fee.

The evidence supports that the Tenant has agreed, in writing, to allow the Landlord to retain the full security deposit in satisfaction of damages listed on the move-out inspection form and claim in this application for dispute resolution. I note that there is no mention of interest owed on the security deposit in the agreement listed on the move-out inspection form however given the listed damages it would be reasonable to conclude that the Tenant was forfeiting the full amount which would include all of the security deposit and interest.

Monetary Order – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, as per the Tenant's written agreement, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Cleaning Costs	\$272.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$322.00
Less Security Deposit of \$850.00 plus interest of \$26.08 forfeit full amount by written agreement signed by the Tenant	-876.08
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	NIL
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	NIL

Conclusion

The Landlord is entitled to retain the Tenant's security deposit and interest of \$876.08 (\$850.00 + 26.08) in accordance with the written agreement entered into by both parties on the move-out inspection report dated July 31, 2009.

The remainder of the Landlord's claim is 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: December 18, 2009.

Dispute Resolution Officer