



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for damage to the unit, site or property and for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), Regulation or tenancy agreement, an Order to keep all of the security deposit and to recover the cost of the filing fee.

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 23, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on September 28, 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 his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to money owed or compensation for damage or loss under the Act?

Background and Evidence

This tenancy started on July 01, 2008. This was a fixed term tenancy for two years and was due to expire on June 30, 2010. The tenancy ended on September 01, 2009 when the tenants exercised the three month end tenancy clause in the tenancy agreement. The tenants paid a

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monthly rent of \$2,500.00 which was due on the first of each month. The tenants paid a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 on July 01, 2008. A move in and move out condition inspection was conducted at the beginning and end of the tenancy with the tenants residing in the property.

The landlord's testify that the property was rented by a company for a member of their workforce to reside in. The landlords state that it is the company who are the legal tenants and they signed the tenancy agreement. The landlords agreed at the start of the tenancy that the tenants could keep a small dog or cat and a pet damage deposit was paid. The tenants then brought a large puppy into the home without permission from the landlords.

The landlords testify that the tenants moved from the rental unit after providing three months written notice to end the tenancy. The move out condition inspection was conducted by the landlord's daughter as the landlords were away at the time. It was noted during this inspection that there was damage to the rental property. The window sills in the living room are scratched, the front door and frame are scratched, the French door windows and frames are scratched and the patio door screen in the master bedroom is torn.

The landlords also found severe staining of the carpets on the main level, basement level and stairs of the home. The carpets throughout the property were cleaned twice by a carpet cleaner engaged by the landlord. The stains could not be removed. There are also extensive pet urine stains on the main floor and basement carpets and the stains and odour cannot be removed despite being cleaned professionally. At the start of the tenancy the tenants requested that the pool table remains in the basement for their use. This now has to be moved and re-set in order to replace the basement carpets in this area. The landlord also found two broken pool-cues left in the rack.

The landlord claims that the tenants used adhesive hooks to hang pictures which took the finish off the walls and these marks have had to be patched and the foyer painted. The tenants also painted a bedroom without permission from the landlord and when the landlord was sanding down the doors in this bedroom they found the bi-fold closet doors and the bedroom door had been badly cracked and needed to be replaced.

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The landlord has provided a copy of the move in and move out inspection reports, photographic evidence of the damage and receipts and estimates to repair the damage and replace carpets. The quote for carpet replacement on the main floor of the house is \$8,917.46. The landlord has attempted to reduce this cost by having this carpet replaced with hard flooring which has reduced the cost to \$8,394.09. The landlord states that this carpet was approximately 17 years old, but in good condition, the landlord requests 40% of the replacement costs for the hard floor to a sum of **\$3,357.63**. The landlord seeks the costs for replacing the basement carpet of \$7,943.76. As this carpet is approximately six years old the landlord is claiming 60% of this cost to a sum of **\$4,766.25**.

The landlord also seeks the costs for cleaning the main floor carpet once and the basement carpet twice to attempt to mitigate his loss in having to replace these carpets. This cost is **\$516.60**. The cost to lift and re-set the pool table in the basement to allow the carpets to be replaced and to replace the two broken pool cues is **\$1,566.60**. The cost to supply and install the bi-fold closet doors and bedroom door is **\$555.61**. The cost to rescreen the bedroom patio doors is **\$68.37**. The cost to replace the glass in the door lights due to severe scratching is **\$677.60**. The landlord also claims the sum of **\$1,417.50** for sanding and re-painting the front door, French doors, interior walls and refinishing and sanding the window ledges, re-painting the downstairs bedroom and sand, prime and painting the bi-fold doors.

The landlord's application was for \$11,464.60 as they have now been able to provide a more accurate costing for the lifting and resetting of the pool table he has asked to amend his claim to \$12,926.16.

The landlord seeks to keep the tenants security and pet damage deposits and any accrued interest in partial satisfaction of his claim

Analysis

I have reviewed all the evidence before me, in the absence of any evidence from the tenant despite having been given opportunity to attend this hearing I have applied a test for damage or loss claims as follows:

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- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords have provided sufficient evidence to support their claim with the move in and move out condition inspection reports, the photographs, written and verbal testimony, the quotes and receipts for the required repair work and work on the pool table and carpet replacement. Therefore I find the landlords are able to meet all of the components of the above test. I have allowed the landlords to amend their monetary claim as I requested that they provide me with accurate quotes for the lifting and re-setting of the pool table. I find that the landlord's application is upheld and they are entitled to a monetary award to the amount of **\$12,926.16** pursuant to section 67 of the *Act*.

I Order the landlords to retain the tenants' security deposit (**\$1,250.00**), pet damage deposit (**\$1,250.00**) and accrued interest (**\$18.85**) in partial satisfaction of the claim pursuant to section 38(4)(b) of the *Act*.

As the landlords have been successful with their claim they are also entitled to recover the **\$100.00** filing fee paid for this application pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:



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Repairs to the property	\$2,719.08
Carpet cleaning	\$516.60
Lift and re-set pool table and replace two pool cues	\$1566.60
Filing fee	\$100.00
Subtotal	\$13,026.16
Less security deposit, pet damage deposit and accrued interest	\$2, 518.85
Total amount due to the landlords	10,507.31

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$10,507.31**. The order must be served on the respondent and is enforceable through the Provincial Court 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: February 23, 2010.

Dispute Resolution Officer