



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for an Order for damage to the unit, an Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an Order to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Landlord sent a notice of the hearing to the Tenant by registered mail on August 25, 2010, and provided the tracking number. The Tenant failed to pick up the mail and from the testimony provided by the Landlord at the start of the proceeding, appears to be avoiding service of the documents. I find that the Landlord made reasonable attempts to serve the Tenant notice of the hearing by sending, and was allowed to proceed.

The Landlord appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order for monetary relief?

Background and Evidence

This tenancy began on August 1, 2009, with the parties entering into a written tenancy agreement, for a fixed term of one year, to continue thereafter on a month to month basis. The monthly rent was set at \$850.00, payable on the first day of the month, and the Tenant paid the Landlord a security deposit of \$425.00 on February 1, 2010.

The Tenant vacated the property at the end of July 2010, and provided the Landlord a forwarding address on August 12, 2010. I find the Landlord made application to retain the security deposit within the fifteen days as required by Section 38 (1) of the Act.

The Landlord testified and supplied photos of damage to and of the unclean state of the rental unit and invoices and receipts for the repair, clean and replacement of the various

items needed to be replaced. The Landlord also testified that he lost rent due to the state of the rental unit after the Tenant vacated.

The Landlord testified that he did not complete a move-in or a move-out inspection report in contravention of sections 23 and 35 of the *Act*. I note that sections 24 and 36 of the *Act* stipulate that if the Landlord fails to complete the move-in and move-out inspection report then the Landlord's right to claim against the security and pet deposits is extinguished; however this does not prevent the Landlord from claiming damage or loss under section 67 of the *Act*.

Analysis

Based on the testimony, evidence, photographs and a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord in this case to prove four different elements:

First, proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find the Landlord provided evidence of the damage and loss to the rental unit. I find that the Landlord was quite reasonable in his costs claimed against the Tenant and has mitigated his loss as much as possible.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept the evidence and testimony of the Landlord and find he has established a loss, through testimony, receipts and pictures, the amount of **\$1,407.06** for these claims. I allow the Landlord \$50.00 for the return of the filing fee for the Application, and find the Landlord has established a total monetary claim of **\$1,407.06**, subject to the set off described below.

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, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Loss of rent for August 2010	\$400.00
Stolen Heater	\$88.21
Wall repair, supplies	\$116.53
Wall repair, labour	\$100.00
Cleaning	\$167.94
Broken Window Coverings	\$26.86
Damaged Kitchen Counter Top	\$107.52
Alarm Keypad Removed	\$50.00
Broken Window	\$100.00
Replacement Door	\$100.00
Furnace Service	\$150.00
Filing Fee	\$50.00
Subtotal (Monetary Order In Favour Of The Landlord)	\$1,457.06
Less Security Deposit Of \$425.00 Plus Interest Of \$0.00 From February 1, 2010	-\$425.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,032.06

The Landlord is hereby granted a monetary Order in the amount of **\$1,032.06**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary Order.

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: October 19, 2010.

Dispute Resolution Officer