



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, MNDC

Introduction

This was an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the monetary award. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing

Issues(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a basement suite in a strata title unit. The tenancy began March 1, 2010 for a fixed term of three months, incorrectly described in the tenancy agreement as ending on May 1, 2010 and thereafter on a month to month basis. The monthly rent was \$750.00 and the tenant paid a security deposit of \$375.00 and a pet deposit of \$100.00 at the commencement of the tenancy. Utilities were included in the rent. The tenant moved her belongings into the rental unit a few days prior to March 1, 2010.

As the e-mail exchanges make clear the relationship between the parties broke down soon after the tenancy began. The tenant notified the landlord by e-mail on April 22, 2010 that she intended to move out on June 1, 2010.

The tenant moved out on May 31, 2010. There was an attempt to conduct a condition inspection at the end of the tenancy. The landlord would not conduct an inspection until the tenant had cleaned the rental unit and fully moved out. The landlord and the tenant did not agree on another suitable time for a condition inspection and no condition inspection was performed after move-out. I note that I was not provided with a copy of a move-in condition inspection report and I assume an inspection was not performed when the tenant moved in.

The landlord submitted video evidence in addition to copies of documents and e-mail exchanges between the parties. I have viewed the video evidence and read the letters and e-mail exchanges.

The landlord claimed payment of the sum of \$5,000.00, but her claim actually totalled \$4,700.00, made up of the following:

Cleaning of rental property \$30/hr for 3 hours, two persons	\$90.00
Pressure wash walkway and stairs	\$150.00
Keys not returned, keys cleaning supplies	\$70.58
Junk removal	78.75
New door	\$200.00
Fixing and touch up painting	\$40.00
Pad lock and latch for utility room	\$15.00
Video CD/pictures	\$50.00
Filing fee	\$50
Failure to give proper Notice	\$750.00
New trim, base boards	\$50.00
Additional hydro usage	\$300.00
Labour	\$250.00
Damages for tenant's conduct	\$2,605.67

Total	\$4,700.00
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The landlord submitted some receipts and invoices in support of her claim. She submitted a bill for a door in the amount of \$63.83, a bill for junk removal of \$78.75, a bill for pressure washing in the amount of \$157.50 a bill or statement from her boyfriend for repair in the amount of \$350.00, including lock replacement a door replacement, baseboard replacement and some painting and patching. The landlord submitted copies of some utility bills. She submitted a receipt that appears to be in the amount of \$70.58, but the particulars of the receipt are entirely obscured in the photocopy by another document placed on top of the receipt.

Analysis and conclusion

The video footage taken by the landlord shows that there was a minor amount of cleaning required at the end of the tenancy. I do not accept the landlord's estimate of the amount of cleaning and repairs as accurate; after hearing the testimony of the parties and viewing the landlord's video evidence I consider her claims for cleaning and repairs to be inflated.

I allow the landlord's claim for cleaning in the amount of \$60.00. I do not allow the claim for pressure washing. I find that the landlord's evidence failed to prove that this was a necessary expense. I allow the claim for junk removal in the amount of \$78.75. I allow the landlord's claim for painting, patching and door and baseboard replacement in the total amount of \$150.00. I also allow the \$15.00 amount for a latch and lock for the utility room.

I do not allow the claim for "failure to give proper Notice". The fixed term of the tenancy ended on May 31, 2010 and the landlord has not shown that the fact that the tenant gave notice by e-mail and not by letter caused a loss in the amount claimed or prevented her from seeking another tenant.

The *Residential Tenancy Act* does not make provision for claims of costs, apart from the filing fee paid to commence a dispute resolution proceeding. This means that the costs of providing evidence are not recoverable and I deny the landlord's claim for the cost to provide video and CD pictures. I have not been provided with adequate proof that the amount of \$78.75 constitutes an amount related to the tenancy; I do not allow the claim for this amount.

The landlord claimed the sum of \$2,605.67 as damages for the tenant's conduct. The evidence makes it clear that the tenant was argumentative, angry, contemptuous, threatening and insulting toward the landlord, but I find that the claim by the landlord the landlord and the amount sought by her constitutes an attempt to collect what amounts to an award of punitive damages from the tenant and such claims are not permitted. The claim for damages relating to the tenant's conduct is denied.

I have awarded the landlord the sum of \$303.75. All other claims by the landlord are dismissed without leave to reapply. The landlord is entitled to recover the \$50.00 filing fee paid for her application, for a total claim of \$353.75 and I order that she retain the said sum from the security deposit that she holds.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

Pursuant to the guideline provision I direct that the landlord return the balance of the tenant's security and pet deposit in the amount of \$121.25 and I grant the tenant an order under section 67 in the said amount. This order may be registered in the Small Claims court and enforced as an order of that court.

Dated: December 2, 2010.
