



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants 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 November 30, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Tenant confirmed she did not submit evidence in response to the Landlord's claim.

Issue(s) to be Decided

1. Has the Tenant breach the *Residential Tenancy Act*, Regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain Monetary Compensation as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written month to month tenancy agreement effective January 21, 2010. Rent was payable on the first of each month in the amount of \$900.00 and on January 21, 2010 the Tenant paid the Landlord \$450.00 as the security deposit. The tenancy ended effective April 30, 2010 at 1:00 p.m. in accordance with a written mutual agreement to end the tenancy. The rental unit was

a brand new basement suite and had never been occupied by anyone prior to this tenancy. The Landlord resided in the upper level of the new home.

The Landlord testified that she witnessed a moving truck move the Tenant's possession on April 18, 2011 and that she did not see the Tenant at the rental unit for the remainder of the month. The Landlord sought guidance from the tenancy branch about the Tenant abandoning the rental unit and on April 30, 2010 at 1:05 p.m. the Landlord entered the unit to find the Tenant had left numerous possessions and debris strewn throughout the rental unit. The unit was re-rented effective April 30, 2010 so the Landlord packed up the Tenants possessions and began to clean the unit before the new tenant arrived. The Tenant arrived approximately 2 ½ hours later, just as the Landlord and two other people finished packing up her possessions.

The Landlord stated she was surprised to see the damage which was caused in the 3 ½ month tenancy. There were over 100 holes left in the walls and ceilings, and possessions throughout the unit as supported by her photographic evidence. Her photos were taken April 30, 2010. The Landlord also referred to the written witness statements provided in her evidence in support of her claim that there was damage caused to the brand new suite. She obtained quotes for repairs from two different painters, as provided in her evidence, which ranged from \$500.00 to \$1,200.00.

The Landlord advised that her new tenant only planned a short 4 month tenancy as he was having a house built and he agreed to live in the suite in the condition that it was in as they needed to move in right away. The Landlord could not afford to hire the expensive painters to conduct the repairs so her husband and she have been working on the repairs when they can gain access to the suite and when they can afford the materials. At this point only one wall remains to be repaired and painted and the ceiling to be re-textured.

The Tenant testified she did not disappear or abandon the unit. She states she only left her skis and one desk at the rental unit which she returned to pick up on April 28, 2010. She claims she gave her keys to the people who were moving into the unit at 12:30 p.m. and not after 1:00 p.m. like the Landlord said. The only damage she caused is from hanging her television on the wall and they did not cause any other damage to walls or the ceiling. She claims the damage was left from the contractors who did not complete the job properly when they built the house.

The Tenant questioned why the Landlord submitted duplicated receipts and why they are dated for a period after she had moved out. She then stated the new tenants were already moved into the unit when she was there on April 29, 2010.

In closing the Landlord requested to withdraw her claim to recover the cost of the filing fee and stated that she would like the awarded amount to equal the security deposit of \$450.00, which she is holding in trust, so she can end this matter without having to deal with the Tenant any further.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Based on the foregoing, the relevant photographic and written evidence, and on a balance of probabilities, I find as follows:

Section 37 of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonable clean and undamaged.

Section 32 of the Act provides that a tenant of a rental unit must repair damage to the rental unit caused by neglect or the actions of the tenant or a person permitted on the residential property by the tenant.

The evidence supports the Landlord's testimony that the Tenant did not have the unit cleared out and cleaned by the end of the tenancy (April 30, 2010 at 1:00 p.m.) which is a breach of section 37 of the Act. I find that the evidence further proves the unit was left with an excess amount of holes in the walls and in the ceiling which caused a loss to the Landlord in excess of \$500.00. Based on the aforementioned I find the Landlord has

met the burden of proof for the test for damage or loss, as listed above, and I hereby approve her claim of \$450.00.

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

Damages to the rental unit caused during the tenancy	\$450.00
Subtotal (Monetary Order in favor of the landlord)	\$450.00
Less Security Deposit of \$450.00 plus interest of \$0.00	-450.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$ NIL

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. The Landlord may deduct the one time award of \$450.00 from the Tenant's security deposit currently held in trust by the Landlord.

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: April 12, 2011.

Residential Tenancy Branch