



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNDC, MNSD, FF

For the landlord – MND, MNSD, FF

Preliminary Issues

The landlord states that only one party named on the tenants application and his application is named on the tenancy agreement. He states the other person was a relative of the tenant staying at the unit. Therefore because the person is not named as a party to the tenancy agreement they should not have been named as a party to these proceedings.

Consequently, the style of cause is amended by removing them as a party.

Introduction

This decision was scheduled to deal with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were due to be heard together. The hearing went ahead as scheduled and the phone line remained open for 10 minutes however the tenant did not dial into the conference call during this time. Therefore, no hearing took place for the tenants application as the tenant has failed to present the merits of her application and her application is dismissed without leave to reapply. The landlord seeks a Monetary Order for damage to the rental unit, and an Order to keep the tenants security deposit and to recover 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 April 27, 2011. Mail receipt numbers were provided in the landlords' documentary evidence. The tenant was deemed to be served the hearing documents 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.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord testifies that this tenancy started on September 15, 2009. This started as a fixed term tenancy for one year and reverted to a month to month tenancy at the end of the fixed term. Rent for this unit is \$1,250.00 per month and is due on the first day of the month in advance. The tenant paid a security deposit of \$625.00 on August 13, 2009.

The landlord testifies that the tenants moved from the rental unit on February 28, 2011 and did not give notice to end the tenancy until after they had moved out. The landlord states he received this on March 06, 2011 along with their forwarding address. After they moved out the landlord found a sink and the vertical blinds had been broken. The sink was cracked and the blinds would not open or close. The landlord has provided a copy of an e-mail sent to the tenants detailing these damages and asking the tenants to fix them and return them to mint condition as they were at move in. The landlord has hand written on the email that the sink and curtains have to be fixed and the tenants have signed this e-mail on March 06, 2011.

The landlord testifies that the tenants wanted to employ a man who was not qualified to fix the sink. He states as this property falls under a Strata they have Strata Bylaws that state all repairs of this nature must be repaired by a licensed technician. The landlord states as the

tenants have acknowledged that they are responsible for these repairs that they must also be responsible for the cost of the repairs by a qualified person.

The landlord testifies that he has not yet had the repairs done but he has obtained two receipts one from Home Depot showing the cost of replacement blinds to be \$134.11 including HST and one from a contractor to replace and install the cracked sink at a cost of \$756.00 including labour and taxes.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

Firstly, with respect to the landlord's claim for damages, the onus is on the landlord to prove a 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

The landlord has provided evidence to show that the tenants acknowledged the damage to the sink and blinds. In the landlords undisputed testimony he has stated that the tenant was willing to fix these items but he argues the tenant was not using a qualified technician to make the sink repairs and this was not permissible under the strata Bylaws. The landlord has also provided estimates to get the sink and blinds repaired.

Therefore, I find the landlord has met the burden of prove that the tenants are responsible for these repairs and find the landlord is entitled to a Monetary Award to the sum of **\$890.11**. On the landlords application he seeks to recover the sum of \$1,140.11 but has

presented no other evidence relating to any other amounts for this claim and has not made an application for unpaid rent. Therefore, the landlords claim will be limited to the cost of these repairs.

The landlord has applied to keep the tenants security deposit. I find that the landlord stated he received the tenants forwarding address in writing on March 06, 2011. Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. The landlord did not file his claim until April 26, 2011; which fell outside the allowable 15 days time frame.

However, sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep the security deposit of \$625.00 to compensate him for the damages.

As the landlord has been successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Damages to the rental unit	\$890.11
Subtotal	\$265.11
Plus filing fee	\$50.00
Total amount due to the landlord	\$315.11

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$315.11. 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: July 12, 2011.

Residential Tenancy Branch