



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent; damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authority to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt as evidence the tenant was served with the hearing documents sent to the tenant's forwarding address on July 18, 2011. The landlord testified the forwarding address was provided by the tenant verbally on July 4, 2011 and the registered mail was not returned to the landlord. I accepted that the tenant was sufficiently served with the landlord's application.

The landlord submitted an amended application to the Residential Tenancy Branch on October 6, 2011. The landlord is seeking to amend the application to decrease claims for rent in light of the claims and an award for unpaid rent, loss of rent and late fees pursuant to a previous application by the landlord under file number 775800. In light of amounts already claimed and awarded under a previous dispute, I reduced the claims under this application to exclude rent, loss of rent, and late fees. Furthermore, I determined the security deposit has already been awarded to the landlord by way of the previous proceeding and, accordingly, it is unnecessary to consider the security deposit in this decision.

By way of the amended application the landlord was also seeking to increase certain claims related to cleaning and damage to the rental unit. The landlord testified that the amended application was sent to the tenant via regular mail. I found that serving the amended application by regular mail to be insufficient service pursuant to section 89(1) of the Act and I refused to accept the amendment to increase the claims for cleaning and damages. Therefore, I proceeded to consider the claims for cleaning and damage as submitted under the original application.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover compensation for cleaning and damage from the tenant?
2. Has the landlord established an entitlement to recover liquidated damages from the tenant?

Background and Evidence

The tenancy commenced on November 1, 2010 for a fixed term set to expire October 31, 2011. The tenant vacated the rental unit on July 3, 2011, dropped the keys off and did not participate in a move-out inspection. The landlord proceeded to inspect the unit and prepare a move-out inspection report without the tenant present.

In making the original application, the landlord sought recovery of the following amounts for cleaning and damage to the rental unit:

Carpet cleaning	\$ 72.80
Drapery cleaning	\$ 25.00
General cleaning	\$ 75.00
Painting/wall repair	\$150.00

The landlord provided a copy of the move-out inspection report as evidence of the condition of the rental unit at the end of the tenancy. The move-out column on the inspection report indicates an "R" next to every item. The landlord testified that "R" refers to "needs cleaning". The landlord provided invoices to show the landlord incurred expenses to clean and repaint the unit.

I noted the inspection report did not indicate a need for wall repair or painting. The landlord pointed to the painting invoice as evidence the tenant caused damage to the wall and testified the unit was in need of painting due to holes caused by hanging art on the walls.

In addition the cleaning and damage to the rental unit, the landlord is also seeking to recover liquidated damages of \$300.00 pursuant to the tenancy agreement. The landlord provided a copy of the tenancy agreement in support of this claim.

Analysis

Section 21 of the Residential Tenancy Regulation provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Based upon the move-out inspection report, I accept that the rental unit required additional cleaning and upon review of the landlord's invoices I find the landlord has substantiated an entitlement to recover the amounts claimed for cleaning, as follows:

Carpet cleaning	\$ 72.80
Drapery cleaning	\$ 25.00
General cleaning	\$ 75.00

The Act provides that normal wear and tear is not damage. Further, Residential Tenancy Policy Guideline 1 provides that holes caused by picture hanging are to be expected unless there are an excessive number of holes or the holes are very large. Upon review of the painting invoice and inspection report, in the absence of other evidence, I find there is insufficient evidence that wall repairs and painting was required due to damage caused by the tenant. Therefore, I deny the landlord's claims for wall damage and painting.

Residential Tenancy Policy Guideline 4 provides for liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. I find the amount payable under the clause to be a reasonable pre-estimate and not a penalty. Therefore, I grant the landlord's request to recover liquidated damages of \$300.00 from the tenant.

Taking into account the landlord's relative success in this application I award the landlord \$40.00 of the filing fee. Accordingly, the landlord is provided a Monetary Order calculated as follows:

Carpet cleaning	\$ 72.80
Drapery cleaning	25.00
General cleaning	75.00
Liquidated damages	300.00
Filing fee	<u>40.00</u>
Monetary Order	\$ 512.80

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord was partially successful and has been provided a Monetary Order in the amount of \$512.80 to serve upon the tenant.

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 21, 2011.

Residential Tenancy Branch