



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for damage to the unit, site or property; an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of 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 September 16, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present 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?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

The landlord testifies that this month to month tenancy started on June 01, 2010. Rent for this unit was \$1,400.00 per month due on the first day of each month in advance. The tenant paid a security deposit of \$700.00 on June 01, 2010.

The landlord testifies that the tenant signed off on the move in condition inspection report agreeing to the condition of the unit at the start of the tenancy. At the end of the tenancy the tenant moved without providing a forwarding address to the landlord to arrange times for the tenant to take part in the move out inspection. The landlord testifies that this inspection was therefore done in the absence of the tenant as new tenants were waiting to move into the unit. A copy of the inspection reports have been provided in evidence. The landlord states she finally spoke to the tenant by telephone and obtained the tenants forwarding address on September 11, 2011.

The landlord testifies that the tenant left the four bedroom rental unit without cleaning it or cleaning the carpets as specified on the tenancy agreement. The landlord states that new tenants were moving into the unit and she had to pay them \$160.00 to clean the unit. A copy of cheque paid to the new tenants has been provided in evidence. The landlord states she had to pay \$291.20 to have the carpets cleaned throughout the unit and a receipt for this work has been included in evidence.

The landlord testifies that during the tenancy the tenant's young daughter blocked the drain in the sink with a toy and left the taps running. This caused a flood in the unit which penetrated into the basement unit below. The landlord was able to make a claim on her insurance for this flood damage to be remedied at a cost of \$9,353.25. The landlord seeks to recover the deductible for her insurance from the tenant. The deductible was \$500.00 however the restoration company gave the landlord \$50.00 back for the use of the landlords Hydro to run all their equipment. Therefore the landlord only seeks to recover \$450.00 from the tenant. The landlord has provided copies of

details of the flood and the deductible paid from the restoration and insurance companies.

The landlord requests an Order to keep the tenants security deposit of \$700.00 in partial satisfaction of her claim. The landlord also seeks to recover her \$50.00 filing fee from the tenant.

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.

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of

the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Section 32 of the Act states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. This also applies to the condition the tenant is required to leave the rental unit in at the end of the tenancy. A tenant is also required to clean the carpets after a tenancy of one year. The landlord's undisputed testimony and information on the condition inspection reports show the tenant failed to leave the rental unit in a reasonably clean condition at the end of the tenancy. Therefore the landlord has established her claim for cleaning of **\$160.00** and carpet cleaning of **\$291.20** and will receive a monetary award pursuant to s. 67 of the Act.

With regards to the landlords claim to recover the deductible paid for the damage caused by the tenants daughter. I find the landlord has meet the burden of proof that this damage was caused by the tenants daughter therefore, I find the landlord is entitled to recover costs incurred for this damage over and above her insurance claim which in this case is the cost of the deductible of **\$450.00**. The landlord will receive a monetary award pursuant to s. 67 of the Act.

I Order the landlord to keep the tenants security deposit of **\$700.00** pursuant to s. 38(4)(b) of the Act in partial satisfaction of her claim.

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

Cleaning	\$160.00
Carpet cleaning	\$291.20
Insurance deductible	\$450.00

Subtotal	\$901.20
Plus filing fee	\$50.00
Less security deposit	(-\$700.00)
Total amount due to the landlord	\$251.20

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$251.20**. 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: December 02, 2011.

Residential Tenancy Branch