



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on October 17, 2011. Mail receipt numbers were provided in the Landlord's verbal testimony. Based on the submission of the Landlord I find the Tenant was sufficiently served notice of this proceeding in accordance with the Act.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf the Tenant despite her being served notice of this hearing in accordance with the Act.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord affirmed they entered into a fixed term tenancy agreement with the Tenant that began on February 1, 2011 and was set to expire after January 31, 2012. Rent was payable on the first of each month in the amount of \$995.00 and the Tenant paid \$497.50 on January 17, 2011 as the security deposit. A move in inspection report was completed January 17, 2011 in the presence of the Tenant and a move out inspection report was completed on September 30, 2011 in the absence of the Tenant.

The Landlord advised the Tenant provided notice to end the tenancy prior to the fixed term effective September 30, 2011 and that she did not attend the move out inspection that was scheduled for that date. He advised the Tenant had planned to leave a bed inside the rental unit and that she had agreed with the previous building manager that she would pay \$100.00 to have it disposed of. The Tenant did not clean the rental unit appliances and did not have the carpets cleaned at the end of the tenancy. The Landlord stated this unit has not yet been re-rented.

The Landlord is seeking a monetary order in the amount of \$632.74 which includes \$100.00 for disposal of the bed, \$100.74 for carpet cleaning, \$32.00 for cleaning the fridge and stove, \$400.00 as liquidated damages as provided for in section 5 of their tenancy agreement, and to have the security deposit offset these amounts.

The Landlord stated the \$400.00 for liquidated damages was a predetermined estimate of the cost to re-rent the unit which includes costs for advertising, wages of staff to show the unit, and administration costs. He confirmed the Tenant was advised of this and that she initialled the tenancy agreement at this section.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, the move-in and move out condition inspection report form, a copy of the residential tenancy agreement, a copy of an invoice for carpet cleaning, a copy of the Tenant's notice to end tenancy, and a copy of a letter sent to the Tenant from the Landlord on October 3, 2011 requesting that she sign and agree to the move out condition inspection form.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

After consideration of the aforementioned I find the Tenant has breached section 37(2) of the Act, leaving the rental unit carpet unclean, leaving a bed inside the rental unit to be disposed of, and leaving the appliances and drapes unclean as noted on the move out condition inspection report.

That being said there is insufficient evidence to prove the amount of loss suffered by the Landlord to dispose of the bed and to clean the appliances as there was no documentary evidence provided nor was there a statement provided from the building manager who allegedly performed the cleaning. There was however evidence provided to support the Landlord's claim with a copy of the invoice to have the carpets cleaned at a cost of \$100.74. Accordingly I find the Landlord has met the burden of proof for loss in the amount of **\$100.74** and dismiss the balance of \$132.00 that was claimed.

The tenancy agreement was for a fixed term that was not set to expire until January 31, 2012 and which provided for liquidated damages of \$400.00. 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 tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I accept the Landlord's testimony that the amount being claimed was a pre-estimate agreed to by both parties and is reasonable to cover the cost of re-renting the unit including advertising, wages of staff to show the unit, and administration costs. Accordingly I award the Landlord **\$400.00** in liquidated damages.

The landlord has primarily been successful with their application; therefore I award recovery of the \$50.00 filing fee.

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 Tenants' security deposit plus interest as follows:

Carpet Cleaning	\$100.74
Liquidated Damages	400.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$550.74
LESS: Security Deposit \$497.50 + Interest 0.00	<u>-497.50</u>
Offset amount due to the Landlord	<u>\$ 53.24</u>

Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$53.24**. This Order is legally binding and must be served 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: January 03, 2012.

Residential Tenancy Branch