



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MND MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The landlord has also requested recovery of the \$100.00 filing fee from the tenant. Although served with the Application for Dispute Resolution and Notice of Hearing sent by registered mail on December 21, 2011 the tenant did not appear. The landlord submitted a copy of the Canada Post tracking record which indicates that the tenant refused delivery of the hearing package.

Issues

Is the landlord entitled to the requested orders?

Background and Evidence

This tenancy began on March 1, 2008 and ended on August 1, 2011. The rent was \$875.00 per month at the end of the tenancy. A security deposit of \$450.00 was paid at the start of the tenancy. A condition inspection report was completed upon move-in and move-out although the reports were not completed in the form required by the regulations.

The landlord claims that the tenant failed to properly clean the unit upon move-out and that there was damage to the unit. Specifically, the landlord advised the tenant in writing as follows after he vacated the rental unit:

"We accessed the unit August 1st at approximately 8:00 a.m., only to find the unit in a condition that was totally unacceptable. The list of damages, lack of cleaning and missing items are provided below. The major damage was caused by cigarette smoking in the unit. A total of 5 major burn marks were evident on the wooden kitchen table as well as 4 under the table on the lino and 1 by the kitchen sink also on the floor. Lingering smoke odour as well as smoke damage to the walls was detected.

When you returned for your items in our shop on Aug 1st at around 4:00 p.m. we approached you to discuss our concerns and express our dismay at the condition of the unit. Your response was that the burns were the result of a curling iron.

After discussion you agreed to forfeit the deposit of \$425.00 and pay an amount of \$1,500.00 for identified damages. Table needs to be replaced, lino needs replaced, all surfaces need to be thoroughly cleaned, walls primed and painted and carpet, furniture, windows and coverings to be cleaned to remove cigarette smoke smells. We will be unable to rent the unit until all repairs are complete.

....

On August 3rd after inspection of the shop, it was discovered that recent scratch marks were evident on a stored Volkswagen camper van belonging to our son. It was determined that most of the damage was the result of your cat that had used the inside of the jitted restoration project as a resting spot....The cat scratches consist of two large patches of scratches, one which is 2 feet by 17 inches in area and the other 25 inches by 19 inches. Much of the scratches have a depth that goes to the bare metal of the vehicle."

The tenant did not submit any evidence.

Analysis

The landlord has made a monetary claim against the tenant comprised of the following:

Kitchen table	\$399.99
Repainting (average of two quotes)	\$1,850.00
Remove & replace lino (average of two quotes)	\$2,285.93
Car repair (average of two quotes)	\$1,652.10
Missing items (listed in claim details)	\$134.53
Filing fee	\$100.00
TOTAL	\$6,422.55

The balance of the claim is based on Section 37 of the Act which requires 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. As a general principle, when making a claim of this nature, the party making the claim bears the burden of proof on a balance of probabilities both as to liability and quantum. In other words, the claimant must first prove that the respondent is liable for the damage and then, having proved that, must then prove the cost of repairing the damage.

In the present case, the landlord has submitted photographs, estimates and receipts in support of the claim.

Based on the information before me and in the absence of any submissions from the tenant, I am satisfied that the landlord has proved the total amount of the claim.

Conclusion

I find that the landlord has established a total monetary claim of \$6,422.55 comprised of the items set forth above. I therefore order that the landlord retain the deposit and interest of \$455.64 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$5,966.91. This order may be filed in the Small Claims Court and enforced 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*.