



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 dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for 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 December 19, 2011. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on December 24, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing the Landlords were given the opportunity to provide their evidence orally and to reference their documentary evidence. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

No one appeared on behalf of the Tenant despite him 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 (the Act)*, regulation and/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 Act?

Background and Evidence

The Landlords affirmed they had entered into a fixed term tenancy agreement with the Tenant that began on April 1, 2011 and switched to a month to month tenancy after June 20, 2011. The tenancy ended November 30, 2011. Rent was payable on the first of each month in the amount of \$525.00 and on April 4, 2011 the Tenant paid \$262.50 as the security deposit. A move in condition inspection report form was completed April 1, 2011 and on December 1, 2011 the Tenant attended the beginning of the move out inspection which had to be terminated by the Resident Manager as it became confrontational.

The Landlord advised she had submitted late evidence to the *Residential Tenancy Branch* which was not sent to the Tenant and which had not been matched to the file in time for the hearing. She stated she was aware that this late evidence could not be considered in my decision.

The Landlord wished to amend her application to withdraw her claim of \$60.00 for blinds, reduce her claim for wall repair from \$75.00 to \$18.00, withdraw her claim for \$40.00 for light fixtures as well as withdraw her claim of \$90.00 for exterior ashtray inserts. She wishes to proceed with her claim of \$198.00 for cleaning the rental unit at \$18.00 per hour, plus \$18.00 for one hour to repair the damaged wall.

The Landlord is relying on her photographic evidence and the move out condition inspection report to prove the Tenant damaged the wall and did not repair it and the Tenant did not clean the unit at the end of the tenancy.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, copies of: the tenancy agreement; final notice of inspection; move in and move out condition inspection reports; and photos of the rental unit.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. 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 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. S

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.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unclean and with damage to the wall at the end of the tenancy.

After careful consideration of the aforementioned, I find the Landlord has met the burden of proof and I hereby approve their claim of \$198.00 for cleaning plus \$18.00 for wall repair for a total amount of **\$216.00**, pursuant to section 67 of the Act.

The Landlord has 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 Tenant's security deposit plus interest as follows:

| | |
|--|-----------------------|
| Damages | \$ 216.00 |
| Filing Fee | <u>50.00</u> |
| SUBTOTAL | \$ 266.00 |
| LESS: Security Deposit \$262.50 + Interest 0.00 | <u>-262.40</u> |
| Offset amount | <u>\$ 3.50</u> |

As the offset amount is under \$10.00 a monetary order will not be issued.

Conclusion

The Landlord's application is upheld and the Landlord has been ordered to retain the Tenant's security deposit.

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: March 01, 2012.

Residential Tenancy Branch