



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Preliminary Issues

At the outset of the hearing the Landlord confirmed they were seeking to retain the security and pet deposits to satisfy their claim for damages to the unit as noted in the details of the dispute on their application for dispute resolution. Therefore, pursuant to section 64 (3)(c) of the Act which stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended, I hereby amend the application to include monetary compensation for damages to the unit, site, or property.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain Orders for monetary compensation for damage to the unit, site, or property, to keep the security and pet deposits in satisfaction of their claim, 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 January 12, 2012. Mail receipt numbers were provided in the Landlord's evidence. Based on the written submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding.

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

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act* (the Act)?

2. If so, has the Landlord met the burden of proof to establish a monetary claim and retain the security and pet deposits as a result of that breach; pursuant to sections 7 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on March 1, 2011 and was set to switch to a month to month tenancy after February 28, 2012. The tenancy ended December 29, 2011 when the Tenant vacated the rental unit after being issued a 1 Month Notice for cause. Rent was payable on the first of each month in the amount of \$1,560.00 and on February 17, 2011 the Tenant paid \$780.00 as the security deposit and \$400.00 as the pet deposit.

The Landlord affirmed that the move in condition inspection report was completed February 28, 2011 and the Tenant did not attend the move out inspection. They had scheduled the move out for December 29, 2011; however throughout the day the Tenant called to reschedule the inspection twice and then did not show up the next morning to conduct the inspection. The Tenant provided his forwarding address on January 5, 2012 and the Landlord returned \$110.00 of the pet deposit to the Tenant on January 10, 2012.

The Landlord is seeking the following for damage or loss as the Tenant did not clean the unit and there was damage caused to the unit by his dog as supported by the photos provided in the Landlord's evidence. The amount claimed is as follows:

- 1) \$56.00 Cleaning which consisted of four hours of cleaning at \$14.00 per hour. Although the Tenant attempted to clean the unit he left areas that required additional cleaning, such as the oven and behind the appliances and other areas, which are displayed in the photos. The charged a minimum amount for cleaning as supported by the invoice.
- 2) \$294.00 to replace and paint the door which was damaged by the dog as supported by the photos. This door is original to the unit which was built in approximately 2003. Their cost to replace, paint, and install new door, as per the invoice in evidence, was \$304.64 which consists of \$192.00 for the door plus \$80.00 of labour plus \$32.64 for tax).
- 3) \$720.00 to cover 50% of the cost to replace the carpet which was damaged by the dog and which the Tenant was aware. This carpet had been replaced in April 2009 and the entire carpet, bedroom, living room, and hallway had to be replaced due to the Tenant's dog scratching and chewing the carpet. The Landlord states

she verbally agreed with Tenant that they would only charge 50% of the carpet costs.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, photographs of the unit at the end of the tenancy, the tenancy agreement, the move-in and move out inspection report form, a copy of the 1 Month Notice, registered mail receipts, invoices for repairs, and copies of receipts for work performed on the unit.

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 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.

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 unit unclean and with some damage at the end of the tenancy.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I

have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 37*.

After careful consideration of the aforementioned and the documentary evidence I hereby find the Landlord has met the burden of proof to establish a monetary claim for the amounts as indicated below, pursuant to section 67 of the Act.

- 1) **\$56.00** - Cleaning of four hours.
- 2) **\$228.14** - For the interior door which was approximately 9 years of age with six years remaining in its useful life. Therefore the award for the door replacement is a depreciated amount which includes \$115.50 for the door plus 80.00 labour plus \$32.64 tax.
- 3) **\$720.00** – For the carpet which was 2 ½ years of age with 7 ½ years remaining in its useful life. The Landlord had a verbal agreement with the Tenant that she would only charge him this amount.

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:

Cleaning	\$ 56.00
Door replacement and painting	228.14
Carpet replacement	720.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,054.14
LESS: Security Deposit \$950.00 + Interest 0.00	-780.00
Pet Deposit \$400.00 + Interest 0.00 - \$110.00 returned	<u>-290.00</u>
Offset amount due to the Landlord	<u>\$ 15.86</u>

Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of \$15.86. 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: March 15, 2012.

Residential Tenancy Branch