



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

+DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from February 1, 2012 to January 31, 2013. Monthly rent of \$870.00 is due and payable in advance on the first day of each month, and a security deposit of \$435.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

By letter dated May 30, 2012, the tenants gave notice to end tenancy effective June 30, 2012. A move-out condition inspection report was partially completed with the participation of both parties on June 30, 2012. The tenant failed to attend subsequent times agreed to between the parties for completion of the inspection and report. However, on July 9, 2012, the tenant returned to meet with the landlord and sign the condition inspection report. At that time the tenant provided her forwarding address and stated that she agreed with only some of the proposed costs assessed by the landlord. The landlord filed an application for dispute resolution on July 24, 2012.

Analysis

Section 63 of the Act speaks to the **Opportunity to settle dispute**. Pursuant to this provision, the following aspects of the landlord's claim were not disputed by the tenant:

\$20.00: stove cleaning.

\$8.00: replacement of 4 light bulbs.

\$15.00: key replacement.

\$20.00: smoke detector replacement.

Sub-total # 1: \$63.00*

Based on the documentary evidence and testimony, the various remaining aspects of the landlord's application and my findings around each are set out below.

\$870.00: liquidated damages. Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the manner in which the tenants ended the fixed term tenancy does not comply with the above statutory provisions.

Clause # 5 in the written tenancy agreement addresses LIQUIDATED DAMAGES, as follows:

If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in B above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$870.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

Further, Residential Tenancy Policy Guideline # 4 addresses “Liquidated Damages.”

Following from all of the above, I find that the landlord has established entitlement to the full amount claimed.

\$168.00: carpet cleaning. Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and....

Further, Residential Tenancy Policy Guideline # 1 addresses “Landlord & Tenant – Responsibility for Residential Premises,” and under the heading – CARPETS, provides in part as follows:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

While the tenant testified that she rented equipment in order to clean the carpets herself, she acknowledged that this was done a couple of weeks before she actually vacated the unit.

In consideration of all the above, in addition to the comparative results of the move-in and move-out condition inspection reports, I find that the landlord has established entitlement to the full amount claimed.

\$10.00: vacuuming. Principally, but not exclusively on the basis of the comparative results of the move-in and move-out condition inspection reports, I find that the landlord has established entitlement to the full amount claimed.

\$10.00: cleaning cupboards. For reasons identical to those set out immediately above, I find that the landlord has established entitlement to the full amount claimed.

\$50.00: filing fee. As the landlord has succeeded with this application, I find that the landlord has established entitlement to the full amount claimed.

Sub-total # 2: **\$1,108.00***

Following from all of the above, I find that the landlord has established entitlement to a claim of \$1,171.00 (\$63.00 + \$1,108.00). I order that the landlord retain the security deposit of \$435.00 and I grant the landlord a monetary order for the balance owed of \$736.00 (\$1,171.00 - \$435.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$736.00**. Should it be necessary, this order may be served on the tenants, 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*.

Dated: October 11, 2012.

Residential Tenancy Branch