



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 under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, authority to keep all or part of the security deposit, and to recover the filing fee.

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.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice”) was considered. The landlord testified that the tenant was served with the Notice and evidence on August 10, 2012 by registered mail to the forwarding address provided during the last arbitration hearing on July 31, 2012. A copy of the registered mail receipt was submitted as documentary evidence. The tenant did not attend the hearing. I find the tenant was served in accordance with the *Act*.

Preliminary and Procedural Matter

The landlord attended a prior arbitration hearing on July 31, 2012 regarding this tenancy, however, during that hearing the tenant had applied for a monetary order and the tenant's application was dismissed in full. As a result, I have considered the merits of the landlord's application as the landlord's application has not been previously decided upon by a Dispute Resolution Officer.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*?
- Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

A fixed term tenancy was signed on May 19, 2011. The tenancy began on June 1, 2011 and was scheduled to expire on May 31, 2012. Monthly rent in the amount of \$795.00 was due on the first day of each month. A security deposit of \$397.50 was to be paid by the tenant at the start of the tenancy, however, the landlord states that the tenant paid \$400.00 instead, which the landlord continues to hold.

The landlord testified that the tenant did not formally move into the rental unit, however, did begin to work in the rental unit. The landlord stated that the work was not approved by the landlord and included the tenant removing the carpets which were only three years old at the start of the tenancy. The landlord testified that the tenant abandoned the rental unit without providing notice to the landlord on or about July 5, 2011.

The landlord has applied for a monetary claim in the amount of \$2,458.08 and clarified that she is also seeking to retain the security deposit of \$400.00, for a total monetary claim of \$2,858.08 consisting of the following:

Cost of new carpets	\$1,906.18
Loss of half of a month's rent for July 2011	\$397.50
Re-rental fee	\$554.40
TOTAL	\$2,858.08

The landlord stated that the carpets were 3 years old when the tenancy began. The landlord did not provide receipts, photos or other documents to support their claim regarding their claim for carpets. The landlord testified that a move-in inspection condition inspection report was completed; however, the move-out condition inspection was not completed. The landlord submitted the condition inspection report as evidence.

The landlord stated that she is seeking half of a month's rent for July 2011 in the amount of \$397.50. The landlord confirmed that the tenant paid rent for June 2011 and the security deposit of \$400.00 at the start of the tenancy.

The landlord testified that she is seeking \$554.40 as a re-rental fee. The landlord was unable to show where that specific fee was included in the tenancy agreement. The landlord did not submit any receipts showing that a re-rental fee was paid by the landlord in the amount of \$554.40. The landlord is also seeking authorization to retain

the security deposit of \$400.00. The landlord filed her application on August 9, 2012, claiming towards the security deposit under the *Act*.

Analysis

Based on the documentary evidence and the landlord's oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Claim for cost of new carpets – The landlord has claimed \$1,906.18 for the cost of new carpets. The move-in condition inspection report states there were stains on the carpets and that the carpets were not cleaned at the start of the tenancy. The landlord failed to provide any invoices to prove that she suffered a loss for carpet replacement. The landlord provided a generic invoice from the agent she hired which shows how the security deposit was managed, however, she failed to provide any receipts, photos or other documents to prove the condition of the carpet at the end of tenancy versus the condition of the carpet at the start of the tenancy. **I find** the landlord has failed to prove that the tenant breached the *Act*, regulation or tenancy agreement resulting in a loss to the landlord. Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply, due to insufficient evidence.

Claim for half of July 2011 rent – The landlord provided a copy of the fixed term tenancy agreement. Section 16 of the *Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Based on the undisputed testimony of the landlord, I accept that the tenant abandoned the rental unit on or about July 5, 2011 and was required to pay rent when rent was due. Section 26 of the *Act* states that a tenant must pay rent when it is due whether or not the landlord complies with the *Act*. Therefore, **I find** the tenant breached the *Act* by failing to pay rent for the month of July 2011.

The landlord has claimed for half of a month's rent for July 2011 in the amount of \$397.50. The landlord was successful in securing a new tenant for August 1, 2011, thereby minimizing the loss to the landlord. **I find** the landlord has met the burden of proof and has established a monetary claim in the amount of **\$397.50**.

Claim for re-rental fee – The landlord is claiming \$554.40 as a re-rental fee. The tenancy agreement does not provide an amount or cost associated with a re-rental fee or liquidated damages. Residential Tenancy Branch Policy Guideline #4 states that liquidated damages 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 genuine pre-estimate of the loss at the time the contract is entered into; otherwise the clause may be held to constitute a penalty, and as a result will be unenforceable.

The landlord failed to provide evidence that she paid \$554.40 to re-rent the rental unit. **I find** the landlord has failed to prove the amount of her loss by failing to show payment of the re-rental fee, and that the re-rental fee was agreed to at the time the contract was entered into. Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply, due to insufficient evidence.

As the landlord was partially successful with her application, **I grant** the landlord recovery of half of the filing fee in the amount of **\$25.00**.

The landlord continues to hold the tenant's security deposit of \$400.00 which has accrued no interest to date.

Monetary Order – **I find** that the landlord has established a total monetary claim in the amount of **\$422.50** comprised of half of July 2011 unpaid rent, and \$25.00 of the filing

fee and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit of \$400.00.

Conclusion

I find that the landlord has established a total monetary claim of \$422.50. **I authorize** the landlord to retain the full security deposit of \$400.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of **\$22.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 23, 2012

Residential Tenancy Branch