



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 was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has applied to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on August 28, 2012 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant by registered mail to the mailing address given by the tenant on June 1, 2012. A Canada Post tracking number and receipt was provided as evidence of service. The landlord said that the tenant signed accepting the mail on September 4, 2012.

These documents are deemed to have been served in accordance with section 89 of the *Act*; however the tenant did not appear at the hearing.

Preliminary Matters

The landlord's application details indicated a claim for damage to the rental unit; however, the section of the application requesting the monetary Order amount did not include the claim for damage. The application was amended to include the claim for damage in the amount indicated in the details section of the application.

The landlord originally applied claiming against the deposit on June 11, 2012. He was given leave to reapply. That original application was made within fifteen days of the end of the tenancy.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$290.00 for damage to the rental unit?

May the landlord retain the deposit in satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

A copy of the tenancy agreement supplied as evidence indicated that the tenancy commenced on February 1, 2011. A deposit in the sum of \$460.00 was paid.

A move-in condition inspection report was completed. A move-out inspection report was scheduled for May 31, 2012; however the tenant had not yet vacated. The landlord told the tenant he would return on June 1 between 10 and 11 a.m.; the landlord attended, but the tenant was still not ready to complete the inspection. The tenant told the landlord she would clean the unit; but after she vacated the landlord discovered the unit needed cleaning.

On June 1, 2012, the tenant gave the landlord her written forwarding address. On June 11, 2012 the landlord submitted an application claiming against the deposit. On August 9, 2012 a hearing was held and decision issued giving the landlord leave to reapply.

The landlord has returned \$140.00 to the tenant; she cashed that cheque.

The landlord supplied a copy of a May 7, 2012 invoice outlining the work he completed for the property owner. Walls required some repair, the oven and stove needed cleaning, the bathroom, some floors, light bulbs were burnt out and a recliner set needed to be disposed. The landlord and a friend spent from 7 a.m. to 4 a.m. cleaning, so the unit could be ready for new occupants. Total costs were \$290.00.

The landlord wishes to claim a total amount, including filing fees that do not exceed the balance of the deposit, so he waived the filing fee cost, if the fee exceeds the balance of the deposit.

The landlord is holding a balance of the deposit in the sum of \$320.00.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the landlord applied claiming against the deposit within fifteen days of the end of the tenancy; June 1, 2012.

In the absence of evidence to the contrary, I find that the landlord has presented evidence indicating that the unit was not left in a reasonably clean state, as provided by the *Act*. The landlord provided testimony and a detailed invoice for the work that was completed to prepare the unit for new occupants. The landlord attempted to have the

tenant complete the inspection report; but on 2 occasions she was not ready to complete the report.

Therefore, I find that the landlord is entitled to compensation in the sum of \$290.00. for damage to the unit.

I find that the landlord's application has merit that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord is entitled to \$340.00. The balance of the deposit is \$320.00. Therefore, the landlord may retain the balance of the deposit; the landlord effectively withdrew his claim for the balance of \$20.00.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$340.00, which is comprised of damage to the rental unit, including the \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the sum of \$320.00, in full satisfaction of the monetary claim.

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: November 13, 2012.

Residential Tenancy Branch