



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent; damage to the rental unit or property; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided evidence, including a registered mail receipt and tracking number, showing the tenant was served with the landlord's Application for Dispute Resolution via registered mail sent to the tenant at his forwarding address on August 20, 2012 and testified that the registered mail was successfully delivered. The landlord also stated that the parties had a telephone conversation on October 23, 2012 with respect to the landlord's claims and the landlord sent an evidence package to the tenant at the same forwarding address via registered mail on October 30, 2012. The registered mail sent October 30, 2012 was unclaimed by the tenant.

I was satisfied the tenant has been sufficiently served in accordance with the requirements of the Act and I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid rent from the tenant; damage to the unit; and, damage or loss under the Act, regulations or tenancy agreement?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The fixed term tenancy commenced April 5, 2012 and was set to expire March 31, 2013. The tenant was required to pay rent of \$1,200.00 on the 1st day of every month and paid a \$600.00 security deposit. The tenant failed to pay rent for July 2012 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the rental unit door on July 14, 2012. The tenant moved out at the end of July 2012.

The landlord re-rented the unit effective September 1, 2012. The landlord is seeking to recover unpaid rent of \$1,200.00 for the month of July 2012 and loss of rent for the month of August 2012.

In filing this application the landlord requested compensation of \$520.00 for damage and cleaning. The landlord's subsequent written submissions and evidence indicated the landlord was seeking to increase the claim to \$555.00. I amended the application accordingly as I found the increase immaterial.

The landlord provided a detailed breakdown of the items requiring repair and I made various enquiries concerning the landlord's claim during the hearing. I have not reproduced the detail supplied by the in this decision; however, I have summarized the claim as follows:

Labour for various repairs	\$ 105.00
Cleaning	40.00
Damage to cork floor – estimated devaluation	252.00
Damage to hardwood floor – estimated devaluation	108.00
Damaged door frame & casing	<u>50.00</u>
Total claim for damage and cleaning	\$ 555.00

The tenant participated in move-in and move-out inspections and the landlord prepared inspection reports. Beside each item listed on the move-out inspection report the tenant noted whether he agreed or disagreed with the landlord's assessment and signed the report. I note that the tenant agreed that he was responsible to a majority of the items included in this claim, including the damage to the flooring which is the most significant portion of the damage claim.

The tenant also provided a forwarding address which is recorded on the move-out inspection report dated July 31, 2012. Branch records show that the landlord submitted this Application for Dispute Resolution on August 15, 2012 although it was processed by the Branch the following day.

Evidence provided by the landlord included copies of: the tenancy agreement; 10 Day Notice; condition inspection reports; advertisements and advertising expense statements; a letter from the tenant dated July 17, 2012; quote for laminate flooring; and, registered mail receipt.

Analysis

Based upon the undisputed evidence before me, I provide the following findings and reasons with respect to the landlord's application.

A tenant is required to pay rent when it is due under the terms of their tenancy agreement, even if the landlord violates the Act, regulation or tenancy agreement. A tenant must not withhold rent unless the tenant has a legal right to withhold rent pursuant to the specific provisions of the Act.

I find the landlord is entitled to recover the unpaid rent for July 2012 based upon the terms of the tenancy agreement. I find the tenancy ended for unpaid rent in July 2012; however, I find the landlord entitled to recover loss of rent for the month of August 2012 from the tenant as I find:

- The tenant violated the terms of his fixed term tenancy agreement by not paying rent and causing the tenancy to end before the expiry of the fixed term;
- A tenant in a fixed term tenancy may be held responsible for loss of rent during the remainder of the fixed term; and,
- The landlord took reasonable steps to re-rent the unit in a timely manner and mitigate losses.

A tenant is required to leave a rental unit reasonably clean and undamaged at the end of the tenancy. I find sufficient evidence to conclude the tenant left the unit damaged and in need of additional cleaning. I further find the landlord's claims reasonable and largely supported by the evidence. Therefore, I grant the landlords' request to recover \$555.00 for cleaning and damage.

I find the landlord compliant with the requirement to file an Application for Dispute Resolution seeking to retain the security deposit on or before August 15, 2012 and I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord. I also award the filing fee to the landlord.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid and loss of rent: July and August 2012	\$2,400.00
Damage and cleaning charges	555.00

Filing fee	50.00
Less: security deposit	<u>(600.00)</u>
Monetary Order for landlord	\$2,405.00

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord is authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$2,405.00 to serve upon the tenant and enforce as necessary.

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: November 30, 2012.

Residential Tenancy Branch