



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 to obtain a Monetary Order for: damage to the unit, site or property; to keep all of the security deposit, 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 November 23, 2012. Canada Post tracking information was provided in the Landlord's evidence which indicates the Tenant did not pick up the registered mail. Case law provides that refusal to accept or pick up registered mail does not avoid or negate service. Therefore, as the registered mail was sent to the address provided by the Tenant verbally, I find that the Tenant was served notice of this proceeding in accordance with section 89 of the Act, and I proceeded with the hearing in the absence of the Tenant.

Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: Canada Post tracking information; seven pictures of the rental unit; a drawing of the rental unit used as the move in condition inspection report; the Landlord's hand written list of items being claimed which is also the move out condition inspection report form; and the tenancy agreement.

The Landlord confirmed that the two Tenants entered into a written month to month tenancy agreement that began on August 1, 2008. Rent was payable on the first of each month in the amount of \$900.00 and or before August 1, 2008 the Tenants paid \$450.00 as the security deposit.

The Landlord submitted a floor plan drawing of the rental unit which indicates the condition of the house and was signed by himself and the two Tenants on August 2, 2008. The male Tenant vacated the rental unit several months prior to the end of the

tenancy. The female Tenant was to vacate by October 31, 2012, but did not return possession of the unit until November 2, 2012.

The Landlord stated that he attended the unit at noon on October 31, 2012 to conduct the move out inspection; however, the Tenant was not finished moving or cleaning. He said he told the Tenant that she would be charged \$30.00 per day for overholding and that he would return the next day at noon to conduct the inspection. The Tenant was still not finished moving or cleaning by noon on November 1, 2012, so he returned November 2, 2012 at noon. At that time the Landlord requested the Tenant sign over her security deposit but she refused. He said he began to point out what was not cleaned, what was damaged, and then started taking pictures and at that time the Tenant became upset and left. She told him verbally that he could use her Mother's address as her service address but she did not provide her forwarding address to him in writing. He said he believes that she moved back into her mother's home.

The Landlord advised that he wrote out the list of deficiencies and wrote a dollar amount he wished to claim for each item. He submitted this document as a combined move out inspection report and statement of his claim for \$1,555.18.

Upon review of his claim the Landlord advised that the house was built in approximately 1954 and he has owned this house since 2003. Since the Tenant moved out he has started renovations and has ripped out the carpets, some of the drywall, and installed new windows. He stated that he was able to scrub the laundry sink with CLR and Comet to remove the stain. He has not completed all of the repairs but he has taken some of the garbage to the landfill at a cost of \$23.00. The Landlord confirmed that he did not submit evidence to prove the age of the appliances and he did not submit receipts for materials or parts purchased to date. He stated he did not provide quotes for work as he is doing most of it himself. He pointed to his photos and stated they should be proof enough that the work was required.

Analysis

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 and the Landlord's undisputed evidence I find that the Tenant 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.

The Landlord has claimed for damages and cleaning as follows:

\$60.00	replace broken pet door
\$30.00	clean the stove
\$714.00	Living room carpet replacement which he depreciated saving the carpet was 5 years old and should last 7 years.
\$6.00	Back bedroom light switch was broken
\$75.00	Stickers left on wall
\$20.00	Bathroom window screen missing
\$45.00	Main bedroom window screen missing
\$250.00	oil base paint on vinyl siding
\$15.00	Front screen door closer
\$95.00	Laundry sink rust stains
\$40.00	to clean molding windows
\$60.00	two days over holding charges
\$35.00	Fridge Door shelf that was missing
\$23.00	removal of garbage
\$40.00	missing recycling blue box

In this instance, I find the Landlord has provided insufficient evidence to prove or verify the actual value of the damage or loss being claimed. I make this finding in part because the Landlord did not provide invoices or receipts for the work which was done. Furthermore, the Landlord indicated that many of the amounts claimed were estimates. In an instance where a party is relying on estimates for work not yet performed, I would expect to see a third party provide these estimates. For example, the Landlord has estimated it will cost \$714.00 to replace the carpet, yet there is no evidence, such as a quote from a carpet company, to support this claim. Even if the Landlord was completing the work himself, he would have to purchase the carpet and other materials and therefore could have provided estimates or receipts. The amounts being claimed were, simply put, guesses made by the Landlord.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. Nominal damages are awarded as an affirmation that there has been an infraction of a legal right in cases where there is insufficient evidence to prove the exact value of a loss.

In this case, upon consideration of the evidence provided I find the Landlord is entitled to damages in the amount of **\$240.00** which includes:

\$ 60.00	overholding
150.00	cleaning

5.00	repair of the pet door
10.00	fridge door shelf
<u>15.00</u>	garbage removal
\$240.00	

I find there to be insufficient evidence to support the balance of the Landlord's claim. Therefore, the remaining amounts are dismissed, without leave to reapply.

The Landlord has been partially successful with his application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

Conclusion

The Landlord has been awarded **\$265.00**. This amount may be withheld from the security deposit of \$450.00 plus interest of \$2.82. The security deposit balance of \$187.82 is to be disbursed in accordance with the *Residential Tenancy Act*.

This decision is legally binding 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: February 25, 2013

Residential Tenancy Branch

