



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for damage to the unit – Section 67;
4. A Monetary Order for compensation – Section 67;
5. An Order to retain the security deposit - Section 38; and
6. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was personally served on March 6, 2013 with the application for dispute resolution and notice of hearing in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

The Landlord confirmed that the Tenant was no longer in the unit after having been served with an Order of Possession obtained in an earlier hearing.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain all or part of the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on October 1, 2012 and ended March 17, 2013. The tenancy agreement provides that rent of \$850.00 was payable monthly on the first day of each month and that at the outset of the tenancy the Landlord collected \$425.00 as a security deposit and \$150.00 as a pet deposit. The Parties mutually conducted a move-in condition inspection however no copy of this report has been provided for this Hearing. No move-out inspection was conducted and the Landlord states that an inspection time was offered but the Tenant walked away from the offer. No copy of a move-out inspection was provided for this Hearing. The Landlord states that the Tenant failed to pay rent for February and March 2013 and claims \$1,700.00.

The Landlord states that the Tenant failed to leave the unit reasonably clean and undamaged and claims as follows:

- \$400.00, estimated as the cost to repair the landscape left damaged by the Tenant;
- \$850.00, estimated as the cost by one company to clean the unit and carpets as well as patching a large hole on a bedroom wall left damaged by the Tenant. No estimate or work order from this company was provided; and
- \$150.00 for the cost of removing garbage left behind by the Tenant, receipts provided.

It is noted that the Landlord provided photos and a video

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding

party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Based on the undisputed evidence that the Tenant failed to pay the rent as required under the tenancy agreement, I find that the Landlord has substantiated an entitlement to **\$1,700.00** in unpaid rent.

Given the photo evidence of the state of the back yard in relation to the lawn maintenance, I find that the Landlord has substantiated that the Tenant failed to leave the yard reasonably clean and maintained. However, given the lack of a move-in condition report and considering that the video and photos focus primarily on the feces and do not with any clarity show the state of the ground, I cannot find that the Tenant left the yard damaged to any further extent than the feces. As the Landlord has only provided an oral estimate on a global cost for the back yard, I find that the Landlord has only established a nominal sum of **\$100.00** in compensation for the Tenants failure to leave the yard reasonably clean and maintained.

Given the photos of the garbage and the receipts of \$24.00, \$52.43, \$45.00 and \$15.00 provided for the costs of removing the garbage, I find that the Landlord has established an entitlement to **\$136.43**. Although the Landlord has provided a photo of a damaged wall and articles left inside the unit, there are no photos that show any cleaning required to the carpets, bathroom, or kitchen. As the Landlord did not provide an invoice detailing the apportionment of costs for cleaning the unit and making repairs to the wall, and considering the lack of condition inspection report showing that the damage to the wall was not present at move-in, I find that the Landlord has not substantiated that costs have been incurred or established. I therefore dismiss this claim.

As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,936.43**. Setting the combined security and pet deposit of **\$575.00** plus zero interest off the entitlement leaves **\$1,361.43** owed by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$575.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,361.43**. If necessary, this order may be 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: April 8, 2013

Residential Tenancy Branch

