



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sugo Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that he received a letter from the tenant's agent, the son of the tenant (who has been occupying the rental unit for a number of years), on January 31, 2013, advising that he planned to vacate the rental unit by February 28, 2013. The tenant's agent (the tenant) confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on March 8, 2013. I am satisfied that the parties served the above documents to one another and that the landlord served his written evidence to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on July 1, 2007. At the expiration of the initial term, this tenancy converted to a periodic tenancy. Monthly rent by the time the tenancy ended and the keys were returned to the landlord on March 2, 2013, was set at \$723.00. This rent was payable in advance on the first of each month.

The parties agreed that a joint move-out condition occurred on March 2, 2013. The landlord produced and provided a copy of the joint move-out condition inspection report to both the tenant's agent and the Residential Tenancy Branch.

The landlord applied for a monetary award of \$250.00. This amount included a \$50.00 award for overholding rent unpaid for the first two days of March 2013. This amount also included a request for a monetary award of \$200.00 for damage caused during this tenancy, as the landlord reported that the rental premises were dirty and required considerable cleaning at the end of this tenancy. At the hearing, the landlord noted that the move-out condition inspection report and his photographs taken on March 2, 2013 confirmed that the rental unit was not cleaned properly at the end of this tenancy. He testified that he had told the tenant's agent that the tenant's agent did not need to steam clean the carpet because the landlord was planning to replace the carpet at the end of this tenancy. The landlord testified that it took him two hours to clean the refrigerator in the rental unit and a further four or five hours to clean the remainder of the rental unit.

The tenant's agent testified that he had a copy of the original joint move-in condition inspection report for this tenancy dated June 1, 2007. However, no written evidence of any kind was submitted by the tenant or his agent for this hearing. The tenant's agent testified that the original condition inspection report showed that the rental unit was not in good condition when the tenancy began. His translator read from that report, noting that there were many items identified as damaged or in poor condition at the beginning of this tenancy. The landlord said that he has only been managing this property for the last year, so was unaware of any initial joint move-in condition inspection report for this tenancy.

Analysis

I first note that the tenant's agent did not dispute the landlord's claim that no rent was paid for March 2013. He said that he was expecting that the security deposit would look after the first two days in March when he remained in possession of the rental unit. Based on the undisputed testimony and evidence of the landlord, I find that the landlord is entitled to a monetary award of \$46.65 (i.e., $\$723.00 \times 2/31 = \46.65) for unpaid rent owing for the first two days in March 2013, the period when the tenant's agent overheld the premises beyond the February 28, 2013 date identified in the tenant's notice to end this tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. When disputes arise as to the condition of the premises before and after a tenancy, it is very helpful to compare the joint move-in and move-out condition inspection reports. Although the tenant's agent testified that he had a copy of the joint move-in condition inspection report, he did not enter this into written evidence.

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The tenant's agent maintained that items in the landlord's claim were left in the same condition as when this tenancy began in 2007.

During the course of this 5 ½ year tenancy, there would be an element of reasonable wear and tear that would be expected to have occurred. Although the landlord submitted written and photographic evidence, his lack of information regarding the condition of the rental unit at the beginning of this tenancy made it difficult for him to dispute the oral evidence provided by the agent through his translator as to the contents of the joint move-in condition inspection report. However, based on the oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean" as some cleaning was likely required by the landlord after the tenant vacated the rental unit.

I note that most of the references in the oral testimony of the tenant's agent through his translator regarding the joint move-in condition inspection report addressed alleged damage in the rental unit at start of this tenancy. While the carpet was identified as dirty in that report, the landlord has not applied for a monetary award with respect to the lack of cleaning of the carpet. The only specific area where the tenant's agent claimed that the premises were dirty was the oven. The landlord testified that he spent six to seven hours cleaning the rental unit at the end of this tenancy. Under these circumstances, I find that the landlord is entitled to a monetary award of \$100.00 for five hours of general cleaning that was likely required at the end of this tenancy.

As the landlord has been partially successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

I allow the landlord to retain the above amounts from the tenant's security deposit.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the landlord to recover unpaid rent, damage to the rental unit and the filing fee for this application from the tenant's security deposit.

Item	Amount
Unpaid March 2013 Rent	\$46.65
Damage – General Cleaning	100.00
Less Security Deposit plus Interest (\$320.00 + \$7.26 = \$327.26)	-327.26
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	(\$130.61)

Although the landlord has been successful in this application, the remaining amount of the tenant's security deposit is \$130.61. I order the landlord to return this remaining portion of the tenant's security deposit forthwith. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 3, 2013

Residential Tenancy Branch