



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a monetary order for unpaid rent, late fees and the cost of carpet cleaning.

Despite being served by registered mail sent on March 27, 2013, the respondent tenants did not appear and the hearing was held in the absence of the tenants.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for rental arrears and compensation for other costs incurred?

Background and Evidence

The tenancy began on April 1, 2012 and rent was \$895.00 per month. A security deposit of \$447.50 was paid.

Evidence included: a copy of the tenancy agreement, a copy of the rental application, a copy of the tenant's rental account ledger and details of the monetary claim.

Also in evidence was a copy of move-in and move-out condition inspection reports. The "move-in" portion of the report was signed by both the landlord and the tenant, but the "move-out" portion was only signed by the landlord. However, in a section titled, "SECURITY DEPOSIT STATEMENT", the tenant signed on March 1, 2013 and the form indicated that \$123.20 would be deducted from the security deposit for carpet cleaning on consent by the tenant. The tenant also provided a written forwarding address.

The landlord testified that the tenant had remained living in the rental unit during the month of February 2013, but failed to pay the rent for the month of February 2013 and moved out leaving \$895.00 in arrears and owing a \$25.00 late fee.

The landlord is claiming \$1,043.00 in total for rent, late fee and carpet cleaning.

Analysis

Carpet Cleaning

With respect to the carpet cleaning costs, I find that the landlord's move out condition inspection report confirmed that, on March 1, 2013, the tenant consented that \$123.20 would be deducted from the security deposit.

I find that the landlord was holding the security deposit on behalf of the tenant in the amount of \$447.50 when the tenancy ended on February 29, 2013.

I find that on March 1, 2013, the tenant then signed the landlord's "*security deposit statement*" expressly allowing the landlord to retain \$123.20 from the deposit for carpet cleaning.

Section 38(4) states, "*A landlord may retain an amount from a security deposit or a pet damage deposit if,*

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount." (My emphasis)

I find that the landlord was entitled under the Act to retain \$123.20 from the tenant's security deposit to cover the cost of the carpet cleaning without need for an order to do so, because the landlord had valid written permission from the tenant to retain funds in this amount.

This would leave \$324.30 still held in trust and subject to a refund under section 38 of the Act for which the tenant did not give the landlord permission to retain..

Rental Arrears and Late Fees

I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

I find that the tenant failed to pay the rent from February 1, 2013 to February 28, 2013 and therefore the landlord is entitled to \$895.00 plus a \$25.00 late fee pursuant to a term in the tenancy agreement. The landlord is entitled to \$920.00 plus the \$50.00 cost of the application for total monetary compensation of \$970.00.

Security Deposit

With respect to the remaining \$324.30 security deposit being held, I find that this residual amount was still subject to a refund to the tenant under section 38 of the Act.

I find that the Act states that the landlord can keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution and successfully obtains a monetary order to retain the amount from the deposit, to compensate the landlord for proven damages or losses caused by the tenant.

In this case, the landlord made this application seeking monetary compensation and to keep the remaining security deposit on March 26, 2013. The monetary order was for rental arrears and late fees owed. The landlord applied to retain the remaining security deposit in partial satisfaction of the claim, and be granted a monetary order for the rest.

However, under section 38 of the Act the landlord must either make the application or refund the security deposit within 15 days after the tenancy has ended and receiving the written forwarding address.

I find that the landlord's application made on March 26, 2013 was made 25 days after the end of the tenancy and receipt of the tenant's forwarding address on March 1, 2013.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit being held.

Accordingly I find that the remaining portion of the tenant's security deposit, of \$324.30, which is now still being held in trust, will have to be doubled under section 38(6) of the Act. Therefore the amount of the deposit to be credited to the tenant is now \$648.60.

Having determined that the landlord is entitled to \$970.00 for rent, late fee and the filing costs, I order that the landlord retain the \$648.60 security deposit in partial satisfaction of the claim, leaving a balance of \$321.14 still owed to the landlord.

I hereby grant the Landlord a monetary order under section 67 for \$321.14. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

Conclusion

The landlord is successful in the application. The landlord was entitled to deduct the cost of carpet cleaning from the tenant's security deposit as agreed to by the tenant. The landlord is also granted a monetary order for rental arrears and late fees.

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 19, 2013

Residential Tenancy Branch