



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD and FF

Introduction

This matter was originally set for hearing on June 27, 2013 and was adjourned to the present session in order to give the representative of the tenant's estate an opportunity to collect additional evidence, in particular documentation of the appointment or registration of an administrator and verification of the value of the estate.

While the tenant's representative had provided a financial statement to the branch but not to the landlord, the landlord accepted the arbitrator's verification of the statement, which indicated that the estate was insolvent. On accepting the verification, he elected to proceed with the hearing.

The landlord's application of April 10, 2013 had been amended to request an award of \$5,524.43 for loss or damage under the legislation and/or rental agreement and damage to the rental unit. He proceeded on acceptance of the fact that the maximum award available to him was the \$1,000 made up of security and pet damage deposits.

Issues to be Decided

This matter now requires a decision on whether the landlord is entitled to retain any part or all of the security and pet damage deposits in set off against damage to the rental unit.

Background, Evidence and Analysis

This tenancy began on January 1, 2010 and ended on or about March 20, 2013 when the tenant passed away in the rental unit. Rent rose for \$1,000 to \$1,043 per month on June 12, 2013 and security and pet damage deposits are \$500 each.

During the hearing, the landlord had submitted claims for loss of rent and repainting of the rental unit as two of the larger claims. I rejected both claims from consideration.

The claim for loss of rent was dismissed on the grounds that the death of the tenant had invoked the doctrine of frustration which nullified any forward looking claims. I find that The *Frustrated Contract Act* relieves both parties from most continuing obligations under the rental agreement.

The claim for repainting was dismissed as paint was over four years old, the age at which standard depreciation tables place its useful life at an end. It was, therefore, fully depreciated.

As to the security and pet damage deposits, the tenant's representative submitted that the landlord's right to claim against it had been extinguished under section 24 of the *Act* as the landlord had not appeared for a scheduled move-out condition inspection.

The landlord submitted written evidence from a party who had represented him at the beginning of the tenancy who had documented four attempts to meet with the tenant to conduct the move-in condition inspection who told him to go ahead and do it alone. Therefore, the tenant's right to claim the deposit had been extinguished by section 24 of the *Act*.

The tenant's representative further submitted that the landlord had promised to return the deposits to the estate if the rental unit was cleaned and prepared for a new tenant by March 31, 2013. He submitted a receipt from a professional carpet cleaning company for \$100 and another from a friend for \$200 who assisted him with the cleaning. The tenant stated that he had also lost income while he took time away from work to clean the rental unit.

The tenant noted that he had done the work as a matter of decency at an extremely difficult time even though he had been under no legal obligation to do so.

The landlord submitted the following additional claims on which I find as follows:

Restoration charges - \$500. The receipt notes that this billing represents the insurance deductible for services billed at \$6,343.73. This claim is allowed in full.

Towel rack - \$33.99. This claim for a replacement for a towel rack that was removed and damaged is supported by a receipt and it is allowed in full.

Cleaning of blinds - \$43.05. Photograph evidence shows the need for cleaning and some repairs of blinds. This claim is supported by a paid receipt and it is allowed in full.

Replace tracks for closet doors - \$8.94. On the basis of photographic evidence and paid receipt, this claim is allowed in full.

Replace refrigerator door - \$425. The landlord stated he had been present when the fridge door was damaged when the tenant's friend threw a chair against it during a disagreement. The claim, supported by a receipt and photo, is allowed in full.

Filing fee - \$50. As the application has succeeded on its merits, I find that the landlord would be entitled to recover the filing fee for this proceeding.

The landlord retired a number of other claims as the awards granted to this point had exceeded the \$1,000 available by way of the deposits and the estate has no further resources.

The award is as follows:

Restoration charges	\$ 500.00
Towel rack	33.99
Cleaning of blinds	43.05
Replace tracks for closet doors	8.94
Replace refrigerator door	425.00
Filing fee	50.00
TOTAL	\$1,060.98

Conclusion

As the award to the landlord exceeds that value of the security and pet damage deposits, pursuant to section 72(2)(b) of the Act, I hereby authorize and order that the landlord may retain the security and pet damage deposits totalling \$1,000 in satisfaction of his claims against the estate of the late tenant.

I wish both parties well in finding peace of mind following such difficult events.

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: August 7, 2013

Residential Tenancy Branch