



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E Y Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed for compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authority to keep all or part of the security deposit and pet damage deposit, and to recover the filing fee.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. The agent was given the opportunity to ask questions about the hearing process during the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The agent testified that the Notice and evidence was served via registered mail on May 29, 2013 and that the name and address matched the name of the tenant and the rental unit address. The agent stated that the tenant was not residing at the rental unit at the time the registered mail package was mailed, however, the registered mail package was never returned to the agent. The agent stated that in addition to registered mail, the agent also personally served the tenant on May 31, 2013 at 10:50 a.m. at the home of the tenant's mother and father, and that the tenants mother and father witnessed her serve the tenant with the Notice and evidence. The agent stated that she received several calls from a tenant advocacy group to discuss the upcoming dispute resolution hearing, however, she was unable to negotiate a settlement agreement with the tenant as the advocacy group had difficulty contacting the tenant for a response. Based on the above, I am satisfied that the tenant was personally served on May 31, 2013 with the Notice and evidence.

Preliminary and Procedural Matter

The agent requested to reduce the landlord's claim from \$2,449.15 to \$2,429.15 as the landlord acknowledged a mathematical error in their monetary claim. As a request to amend the application to a lower amount does not prejudice the tenants, the agent's request was granted.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A fixed term tenancy agreement began on September 28, 2012 and was scheduled to revert to a month to month tenancy after September 30, 2013. Monthly rent in the amount of \$910.00 was due on the first day of each month. The tenant paid a security deposit of \$455.00 at the start of the tenancy which the landlord continues to hold. The agent testified that the landlord also continues to hold a \$25.00 key deposit and a credit of \$1.80 for a laundry smart card which had a balance of \$1.80 on it, although the tenant originally stated that the balance on the laundry smart card was \$0.00. As a result, the landlord continues to hold a total of \$481.80 include the security deposit, key deposit and laundry smart card credit.

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") in evidence. The 10 Day Notice is dated May 3, 2013, and the agent stated that the 10 Day Notice was personally served on the tenant on May 3, 2013 at 12:45 p.m. at the rental unit, and the tenant signed the proof of service document submitted in evidence. The amount owing for unpaid rent listed on the 10 Day Notice is listed as \$910.00 owing as of May 1, 2013. The agent stated that the tenant failed to pay any rent for May 2013. The effective vacancy date listed on the 10 Day Notice is May 14, 2013. The agent stated that the tenant vacated the rental unit on May 17, 2013 and provided her forwarding address verbally on May 29, 2013.

The agent stated that both the incoming and outgoing condition inspection reports were completed, however, the tenant refused to sign the outgoing condition inspection report. The condition inspection reports were submitted in evidence.

The landlord has claimed for \$2,429.15 comprised of the following:

Item #	Description	Amount
1	Unpaid May 2013 rent	\$910.00
2	Loss of June 2013 rent	\$910.00
3	Suite cleaning	\$100.00
4	Carpet cleaning	\$100.00
5	Drape cleaning	\$109.15
6	Liquidated damages	\$300.00
TOTAL		\$2,429.15

Item #1 is for \$910.00 for unpaid rent for the month of May 2013 which resulted in the tenant being issued a 10 Day Notice. The agent stated that the tenant did not dispute the 10 Day Notice or pay any of the \$910.00 May 2013 rent owing.

Items #2 is for loss of June 2013 rent in the amount of \$910.00. The agent testified that she began to advertise the rental unit as of May 24, 2013. The agent stated that advertising consisted of ads posted on several popular internet websites, a military magazine and the landlord's company website. The agent testified that a new tenant was secured for July 1, 2013.

Item #3 is for suite cleaning in the amount of \$100.00. The agent testified that the landlord paid for six hours of cleaning, of which, two hours was considered by the landlord to be "normal wear" cleaning, for which the landlord was not seeking compensation. The invoice submitted in evidence supports that four hours at \$25.00 per hour for a total of \$100.00 was required to clean the rental unit, while the other two hours were not being charged for by the landlord due to those two hours being considered "normal wear" cleaning, for which the tenant was not responsible. The outgoing condition inspection report supports that the rental unit was not left in a clean condition by the tenant at the end of the tenancy.

Item #4 is for carpet cleaning in the amount of \$100.00. The agent submitted an invoice which supports the \$100.00 being claimed for carpet cleaning. The agent testified that the tenant has two little children and that there were a lot of spills on the carpets as a result, which had to be cleaning before the rental unit could be rented again. The outgoing condition inspection report supports that the carpets were in need of cleaning at the end of the tenancy.

Item #5 is for drape cleaning in the amount of \$109.15. The invoice submitted by the agent supports the amount of \$109.15 being claimed for drape cleaning. The agent stated that only the drapes that required cleaning were cleaned after the tenant vacated the rental unit. The agent testified that the tenant's children must have been touching the drapes as the drapes were dirty and required cleaning. The outgoing condition inspection report supports that the drapes were in need of cleaning at the end of the tenancy.

Item #6 relates to term #5 of the tenancy agreement, which states that the tenant agrees to pay liquidated damages of \$300.00 if the tenant ends the fixed term tenancy or is in breach of the *Act* or a material term of the tenancy agreement that causes the landlord to end the tenancy before the end of the term listed in the tenancy agreement. Both the landlord and the tenant initialled term #5 of the tenancy agreement submitted in evidence and the tenant signed the tenancy agreement on September 28, 2012, acknowledging that she agreed with the terms of the tenancy agreement.

The landlord submitted a monetary worksheet, condition inspection report, tenant ledger, tenancy agreement, the 10 Day Notice, Invoices and advertising documents in evidence. I have considered all relevant evidence that met the requirements of the rules of procedure.

Analysis

Based on the documentary evidence and the undisputed oral testimony of the agent, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Item #1 - Unpaid May 2013 rent – The agent testified that the tenant failed to pay rent for May 2013 in the amount of \$910.00 and vacated the rental unit on May 17, 2013 which was three days after the effective vacancy date of the undisputed 10 Day Notice dated May 3, 2013. Section 26 of the *Act* states:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

[emphasis added]

As a result of the above, **I find** the tenant breached section 26 of the *Act* by failing to pay rent when rent was due May 1, 2013. Therefore, **I find** the landlord has met the burden of proof for this portion of their claim and are entitled to compensation in the amount of **\$910.00** for unpaid rent for May 2013.

Item #2 – Loss of rent for June 2013 – The agent stated that the tenant vacated the rental unit on May 17, 2013 and that advertising for the rental unit began on May 24, 2013. The tenant vacated after the effective vacancy date listed on the 10 Day Notice, and waited until May 17, 2013 before vacating. The landlord provided evidence to support their advertising of the rental unit, however, suffered a loss of June 2013 due to the tenant failing to pay rent for May 2013 and then remained in the rental unit beyond the effective vacancy date of the 10 Day Notice. The landlord was able to minimize their loss by securing a new tenant effective July 1, 2013. Therefore, **I find** the landlord has met the burden of proof for this portion of their claim and are entitled to compensation in the amount of **\$910.00** for loss of rent for June 2013.

Items #3 – Suite cleaning – The landlord has claimed \$100.00 for suite cleaning. Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[emphasis added]

The agent testified that the landlord paid for six hours of cleaning, of which, two hours was considered by the landlord to be “normal wear” cleaning, for which the landlord was not seeking compensation. The invoice submitted in evidence supports that four hours at \$25.00 per hour for a total of \$100.00 was required to clean the rental unit, while the other two hours were not being charged for by the landlord due to those two hours being considered “normal wear” cleaning that was not being claimed for. The outgoing condition inspection report supports that the rental unit was not left in a clean condition by the tenant at the end of the tenancy. Based on the above, **I find** the landlord has met the burden of proof for this portion of their claim and are entitled to compensation in the amount of **\$100.00** for suite cleaning.

Item #4 – Carpet cleaning – The landlord has claimed \$100.00 for carpet cleaning. The agent submitted an invoice which supports the \$100.00 being claimed for carpet cleaning. The agent testified that the tenant has two little children and that there were a lot of spills on the carpets as a result, which had to be cleaning before the rental unit could be rented again. The outgoing condition inspection report supports that the carpets were in need of cleaning at the end of the tenancy. Based on the above, **I find** the landlord has met the burden of proof for this portion of their claim and are entitled to compensation in the amount of **\$100.00** for carpet cleaning.

Item #5 – Drape cleaning – The landlord has claimed \$109.15 for drape cleaning. The invoice submitted by the agent supports the amount being claimed. The agent stated that only the drapes that required cleaning were cleaned after the tenant vacated the rental unit. The agent testified that the tenant’s children must have been touching the drapes as the drapes were dirty and required cleaning. The outgoing condition inspection report supports that the drapes were in need of cleaning at the end of the tenancy. Based on the above, **I find** the landlord has met the burden of proof for this portion of their claim and are entitled to compensation in the amount of **\$109.15** for drape cleaning.

Item #6 – Liquidated damages - Term #5 of the tenancy agreement states that the tenant agrees to pay liquidated damages of \$300.00 if the tenant ends the fixed term tenancy or is in breach of the *Act* or a material term of the tenancy agreement that causes the landlord to end the tenancy before the end of the term listed in the tenancy

agreement. Both the landlord and the tenant initialled term #5 of the tenancy agreement submitted in evidence and the tenant signed the tenancy agreement on September 28, 2012, acknowledging that she agreed with the terms of the tenancy agreement. The tenancy ended based on the tenant breaching the *Act* by failing to pay rent when it was due. I find the amount being claimed to be reasonable and does not constitute a penalty. Based on the above, **I find** the landlord has met the burden of proof for this portion of their claim and are entitled to compensation in the amount of **\$300.00** for liquidated damages.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

The landlord continues to hold the tenant's security deposit of \$455.00, key deposit of \$25.00 and laundry smart card which has a credit of \$1.80, for a total amount being held by the landlord of \$481.80. The security deposit has accrued \$0.00 since the start of the tenancy. The landlord filed for dispute resolution on May 28, 2013 and the tenant did not provide her forwarding address until May 29, 2013, which was provided verbally by the tenant.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$2,479.15** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit, in addition to deductions for the tenant's key deposit credit and laundry smart card credit as follows:

Item #	Description	Amount
1	Unpaid May 2013 rent	\$910.00
2	Loss of June 2013 rent	\$910.00
3	Suite cleaning	\$100.00
4	Carpet cleaning	\$100.00
5	Drape cleaning	\$109.15
6	Liquidated damages	\$300.00
	Filing fee	\$50.00
	Subtotal owing by the tenant to the landlord	\$2,479.15
	<i>Less tenant's \$455.00 security deposit</i>	<i>-(\$455.00)</i>
	<i>Less tenant's \$25.00 key deposit credit</i>	<i>-(\$25.00)</i>
	<i>Less tenant's \$1.80 laundry smart card credit</i>	<i>-(\$1.80)</i>
	TOTAL OWING BY THE TENANT TO THE LANDLORD	\$1,997.35

I authorize the landlord to retain the tenants' full security deposit of \$455.00, and have deducted the tenant's key deposit credit of \$25.00 and laundry smart card credit of \$1.80 in partial satisfaction of the landlord's claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord in the amount of **\$1,997.35**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord has established a total monetary claim of \$2,479.15. I authorize the landlord to retain the tenants' full security deposit of \$455.00, and have deducted the tenant's key deposit credit of \$25.00 and laundry smart card credit of \$1.80 in partial satisfaction of the landlord's claim. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord in the amount of \$1,997.35. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: September 06, 2013

Residential Tenancy Branch

