



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit 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.

The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable her to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She testified that this tenancy ended on May 26, 2013, after the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on April 9, 2013. The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on June 13, 2013 to the address provided to her by the tenant on June 3, 2013. She entered into written evidence a copy of the envelope showing the Canada Post Tracking Number and the date when it was sent to the tenant. I am satisfied that the landlord served the above documents and the written and photographic evidence packages 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 periodic tenancy commenced on February 1, 2013. Monthly rent was set at \$1,025.00, payable in advance on the first of each month, plus hydro. The tenant paid a

\$512.50 security deposit on January 7, 2013. As per a previous application by the landlord for dispute resolution to obtain an Order of Possession and a monetary award for unpaid rent, another Arbitrator appointed under the *Act* issued a decision on May 17, 2013, allowing the landlord to retain \$50.00 from the tenant's security deposit. The current value of the tenant's security deposit is \$462.50, following the May 17, 2013 decision.

The landlord entered sworn testimony and written evidence that she attempted to conduct a joint move-out condition inspection with the tenant on May 26, 2013 and June 4, 2013. The tenant did not attend either of these scheduled appointments for a joint move-out inspection. The landlord entered into written evidence a copy of her May 26, 2013 inspection report of the rental unit, after the tenant surrendered the keys to the rental unit to the landlord. A copy of this inspection report was provided to the tenant by the landlord. The landlord also provided a copy of her Monetary Order Worksheet and invoices for the expenses incurred by the landlord in repairing damage arising out of this tenancy. The landlord's monetary claim was for \$485.00 in damage, as set out below:

Item	Amount
Replacing Damaged Front Door Knob	\$25.00
Cleaning Blinds	75.00
General Cleaning of Suite	50.00
Painting Walls	150.00
Painting Baseboards	50.00
Repairing Bedroom Door	25.00
Painting Four Doors	60.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Requested	\$485.00

The landlord testified that no move-in condition inspection was conducted for this tenancy. However, the landlord submitted detailed evidence outlining the measures taken by the landlord during the period from October 2012 until January 31, 2013, to improve and renovate this rental unit while the unit remained vacant. She also gave sworn oral testimony that the landlord had repainted the entire rental unit shortly before this tenancy began, as is the landlord's usual practice.

Analysis

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.

The landlord has supplied written, oral and photographic evidence to demonstrate the condition of the rental unit at the end of this tenancy. I find that work definitely needed to be done at the end of this tenancy to ready it for occupancy by a new tenant. However, the absence of a move-in condition inspection or move-in condition inspection report presents some problems in considering the extent to which the damage noted in the May 26, 2013 move-out condition inspection report arose during the course of this very short term tenancy.

Based on a balance of probabilities, I find that the landlord has provided sufficient evidence to demonstrate that considerable work was done to this rental unit before this tenancy began to bring the rental unit into good condition when the tenancy commenced. The tenant has not provided any evidence to dispute the landlord's claim that the damage noted by the landlord in the move-out condition arose during this tenancy. Under these circumstances, I find that the landlord has provided sufficient evidence to demonstrate the landlord's entitlement to a monetary award of \$435.00 for damage that arose during this tenancy and needed to be repaired before the premises could be re-rented. Since the landlord has been successful in this application, I also allow the landlord's application to recover the filing fee for this application.

I allow the landlord to retain the remaining \$462.50 of the tenant's security deposit to partially satisfy the landlord's claim for a monetary award.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover damage arising out of this tenancy and the filing fee for this application and to retain the remaining portion of the tenant's security deposit:

Item	Amount
Replacing Damaged Front Door Knob	\$25.00
Cleaning Blinds	75.00
General Cleaning of Suite	50.00
Painting Walls	150.00
Painting Baseboards	50.00

Repairing Bedroom Door	25.00
Painting Four Doors	60.00
Recovery of Filing Fee for this Application	50.00
Less Remaining Portion of Security Deposit	-462.50
Total Monetary Order	\$22.50

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: September 16, 2013

Residential Tenancy Branch

