



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; his witness; the tenant; and his witness.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on March 1, 2013 for a 1 year and 1 day fixed term tenancy agreement beginning on March 1, 2013 for a monthly rent of \$445.00 due on the 1st of each month with a security deposit of \$240.00 paid. The landlord submits the tenancy ended on June 30, 2013.

The landlord described the residential property as an upstairs suite in a duplex that was had three bedrooms that were rented out to three tenants under separate tenancy agreements and that all three tenants had access to and used the living area; kitchen and bathroom as common areas.

The landlord testified that during the tenancy the other two tenants, who also vacated their units at the same time as this tenant, had advised him that this tenant was not

cleaning either the kitchen or bathroom. The landlord submits that the other two tenants eventually stopped using the main bathroom at all because of this.

The landlord submits that when he asked the tenant for the keys to the residential property and rental unit the tenant told him they were in his room. The landlord submits that he went into the bedroom and could not find the keys. The landlord's witness testified that she never saw the tenant give the keys to the landlord nor did she ever hear from the landlord that the tenant provided the keys at any other time.

The tenant and his witness submit that the tenant gave the landlord the keys at the landlord's residence – next door to the dispute address. The tenant's witness states she saw the tenant give the keys to the landlord but she could not describe the landlord to any great extent. Both the landlord and his witness testified that they had never seen anyone with the tenant.

The landlord's witness testified the bathroom had been uncleaned and had hair in the sink and bathtub and that there were dirty towels on the floor. She also testified that the oven was very dirty and that there was substantial food left behind. The witness identified that she cleaned the unit for the landlord and charged the landlord \$30.00 per hour.

The tenant submits that he cleaned up the rental unit to the best of his ability but that everything else was the responsibility of the other two tenants.

The landlord submits the tenant failed to return keys to both the front and rear entry to the residential property; to clean the bathroom and kitchen including cleaning the oven and stove top and garbage removal. The landlord has provided no documentary evidence to support the condition of the rental unit at either the start or the end of the tenancy but his witness testified to the condition at the end of the tenancy.

The landlord seeks the following compensation:

Description	Amount
Front door lock replacement	\$37.45
Rear door lock replacement (portioned amount of a new key pad entry lock)	\$40.00
Bathroom cleanup – 2 hrs at \$30.00 per hour (including supplies)	\$60.00
Kitchen cleanup and garbage removal (including supplies)	\$60.00
Total	\$197.45

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

I find that as the landlord's witness confirmed the landlord's testimony that the tenant had told him the keys were in the rental unit but were not and based on the balance of probabilities the tenant failed to return the keys.

I find it unlikely that the tenant would have not returned the keys to the landlord on the day the landlord was inspecting the unit and the tenant had already moved out and that he would come back the next day to return the keys.

As such, I find the landlord has established the tenant failed to return the keys, however, as the landlord has provided no evidence to establish the cost of the replacement keys and/or locks, I find the landlord has failed to establish the value of the damage or loss and I dismiss this portion of the landlord's claim.

In relation to the landlord's claim for cleaning of the kitchen and bathroom I find the tenant does not dispute the condition of the rental unit at the end of the tenancy and as such, I find the landlord has established the unit required cleaning.

Based on the testimony of the landlord and his witness, I am satisfied that the cleaning required took the amount of time and cost the landlord the amounts as claimed above.

However, as the common areas of the rental unit were used and/or accessible to the other two tenants I find the landlord cannot establish that the responsibility for the condition of the unit rests totally with this tenant. As such, I find the landlord is entitled to compensation for cleaning representing 1/3 of the total claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$65.00** comprised of \$120.00 cleaning and \$25.00 of the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the the security deposit held in the amount of \$240.00 in satisfaction of this claim. I grant a monetary order to the tenant for return of the balance of the deposit in the amount of **\$175.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: October 31, 2013

Residential Tenancy Branch

