



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:47 a.m. in order to enable her to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord and his wife/agent testified that they sent a copy of the landlord's dispute resolution hearing package as well as the landlord's written and photographic evidence to the tenant at a forwarding address provided to her by registered mail on July 5, 2013. The landlord provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. The agent testified that this package was returned to them by Canada Post as unclaimed. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed to have been served with the landlord's hearing and evidence packages on July 10, 2013, the fifth day after this registered mailing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? 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

The tenant entered into two successive one-year fixed term tenancies. The most recent of these tenancies was scheduled to end on July 31, 2013. Monthly rent was set at \$2,700.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$1,350.00 security deposit and \$250.00 pet damage deposit, both paid on July 31, 2011.

The landlord testified that on May 21, 2013, the tenant provided her written notice to end this tenancy by June 30, 2013, by leaving it in the landlord's mailbox. The landlord provided sworn testimony and written evidence that the tenant was still in the rental unit on July 1, 2013. The agent testified that the tenant actually moved out of the rental unit on or about June 24, 2013. However, the agent testified that the tenant did not return her keys until July 9, 2013.

The landlord's application for a monetary award of \$7,000.00 included a request for the recovery of \$2,700.00 in unpaid rent owing from July 2013. The agent said that the tenant cancelled payment on her July 2013 rent cheque. The landlord's application also included a claim for damage to hardwood flooring that the landlord maintained requires resanding and refinishing after this tenancy ended. The landlord supplied written and photographic evidence in support of the landlord's assertion that dog urine and feces damaged the carpets and flooring. The landlord claimed that a lot of cleaning was required to the carpets, windows, walls, bathrooms, blinds, stove, cupboards, and outside decks at the end of this tenancy. Although the landlord did not supply receipts for many of these items, the landlord did provide a \$1,225.70 receipt for the repair of an imported door that was damaged during the early stages of this tenancy. The landlord also supplied a copy of a \$398.77 receipt for the repair of a plugged drain in the kitchen sink. The landlord is a retired plumber and was unable to repair the damage to the drain. He had to have a plumbing company attend to unclog the drain which extended well beyond the kitchen.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that there is undisputed evidence that the tenant was in breach of her fixed term tenancy agreement because she vacated the rental premises prior to the July 31, 2013 date specified in that agreement. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for July 2013, the last month of her fixed term tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for July 2013. The agent testified that she and her husband placed advertisements in the local newspaper in June 2013 seeking a tenant to take occupancy in July 2013. They placed these ads in this paper three times per week. They also did not receive vacant possession of the rental unit until July 9, 2013, and, by their account, had to clean the premises afterwards, which took three weeks to complete. The landlord and wife moved back into this rental unit as of August 2013. Based on the undisputed evidence from the landlord and his wife/agent, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the loss in rent for July 2013. For these reasons, I issue a monetary award in the landlord's favour in the amount of \$2,700.00 for unpaid rent owing from July 2013, the last month of this fixed term tenancy.

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.

As the landlord has not repaired the floors, I dismiss his application for a monetary award for this item, without leave to reapply. I do so as I find that the landlord has not demonstrated any actual losses resulting from this alleged damage that the landlord maintained occurred during this tenancy.

In this case, although the landlord and his agent maintained that they conducted a joint move-in condition inspection with the tenant, they did not prepare a written report regarding this inspection. Although they conducted their own inspection of the premises at the end of this tenancy, they did not produce a move-out condition inspection report. Under such circumstances, it becomes difficult to compare the condition of the rental unit when the tenancy began with the condition of the premises at the end of this

tenancy. As the photographs reveal that some cleaning was required at the end of this tenancy that likely arose during the course of this tenancy, I allow the landlord a nominal monetary award of \$150.00 for cleaning the rental unit at the end of this tenancy.

I have also carefully considered the two receipts that the landlord submitted in support of his application for a monetary award. Based on these examples of actual losses incurred, the sworn testimony of the landlord and his agent, and the absence of any evidence to the contrary, I find that the landlord is entitled to a monetary award in the amount of \$1,225.70 for the repair of one of the doors that arose as a result of damage caused by the tenant. I also find that the landlord is entitled to recover his \$398.77 expense incurred to unclog the kitchen drain. I find that the dates of these repairs are consistent with the landlord's claim that the damage arose as a direct result of the tenant's actions and not as a result of normal wear and tear.

I allow the landlord to retain the tenant's deposits plus applicable interest in partial satisfaction of the monetary awards issued in this decision. No interest is payable over this period. As the landlord has been partially successful in this application, I allow the landlord to recover one-half of his filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, damage arising out of this tenancy and his filing fee, and to retain the tenant's deposits:

Item	Amount
Unpaid June 2010 Rent	\$2,700.00
Repair of Damage to Door	1,225.70
Repair of Damage to Drain	398.77
General Cleaning	150.00
Less Security & Pet Damage Deposits	-1,600.00
Recovery of ½ Filing Fee for this Application	50.00
Total Monetary Order	\$2,924.47

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: October 07, 2013

Residential Tenancy Branch

