



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a Monetary Order relating to: damage to the unit, site or property; for money owed or compensation for damage or loss under the Residential Tenancy Act (referred to as the Act), regulation or tenancy agreement; to keep all or part of the pet damage or security deposit; for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of the application.

The landlord served the tenants with a copy of the application, the Notice of Hearing documents, a copy of the amended application and the documentary evidence used for this hearing by registered mail. The Canada Post tracking numbers were provided as documentary evidence. The landlord also provided the Canada Post tracking report which shows that the documents were redirected to the recipient's new address. Based on this, and in the absence of any evidence from the tenants to dispute this, I find that the tenants were served the relevant documents as required by the Act.

The tenants failed to appear for the hearing and did not provide any documentary evidence in advance of the hearing despite being served with the details of the hearing in accordance with the Act.

The landlord appeared for the hearing and provided affirmed testimony; the landlord also provided an extensive amount of documentary evidence all of which related to a monetary claim for damages and loss of rent which amounted to a claim well in excess of \$5,000.00 in the landlord's application.

As a result, I only considered the evidence presented by the landlord during the hearing relating to items that totaled the landlord's application amount for damages to the rental unit of \$5,000.00

Issue(s) to be Decided

- Is the landlord entitled to damages to the rental suite caused by tenants?
- Is the landlord entitled to keep the security and pet damage deposit in partial satisfaction of the landlord's claim?

Background and Evidence

The landlord testified that the tenancy started on September 15, 2012 for a fixed term of one year. A written tenancy agreement, provided as evidence, was completed and the tenants paid \$1,000.00 as a security deposit and \$300.00 as a pet damage deposit throughout the tenancy, which the landlord still retains. Rent was payable by the tenants in the amount of \$2,000.00 on the first day of each month. The tenancy ultimately ended with a verbal mutual agreement for the tenants to leave on July 2, 2013 as they had failed to pay rent throughout the tenancy and could no longer afford the rent amount for the suite; however, the tenants did not vacate the rental suite until August 15, 2013.

The landlord testified that after the tenants had vacated the rental suite a considerable amount of damage had been caused by the tenants which amounted to a loss of more than \$5,000.00. However the landlord only testified to the following damages caused by the tenants, each one being supported by photographic evidence and documents (invoices, estimates, receipts) to support the amounts claimed:

- \$34.78 for broken buoys on the pool rope. The landlord testified that the buoys were smashed by the tenants' child like eggshells and that the cost of replacing the rope would have been \$56.00; however, the landlord mitigated this loss by sourcing a rope from the e-bay website.
- \$608.59 for the cost of a lawn mower steering bracket. The landlord testified that the tenants had caused a considerable amount of damage to the ride on lawnmower from what appeared to be rock damage. The mower blades had been bent, the pin on the shaft was missing and the rollers were also broken. The landlord mitigated this loss by repairing the mower by herself but was unable to repair the steering bracket which she had to purchase from Sears for the mower to function again.
- \$187.92 for damage to a shelf in the dining room. The landlord testified that the tenants had stored paint pots on the dining room shelf which was made out of cherry hardwood. The heavy paint used had stuck to the shelf becoming raised and causing the wood to blister; this was unable to be removed without

damaging the shelf. The landlord could not source the exact shelf but claims the cost of a similar shelf which she located on the Amazon website. Although she had to actually purchase two matching ones, the landlord claims from the tenants the cost of replacing only one in order to mitigate her loss.

- \$635.25 for the cost of digging and pumping the septic system. The landlord testified that the tenants stored the kitty litter trays in the bath tub of the rental suite. When the trays needed to be emptied the tenants simply flushed the material down the plug hole of the bath. The landlord testified that this then caused the material to accumulate into the tank of the basement suite and subsequently into the septic tank. The landlord made several attempts to clear the material using Drano and Septico products but to no avail. As a result, the landlord had to hire a professional company to rectify the issue.
- \$1,895.97 for damage to the refrigerator door. The landlord testified that the tenants had caused several dents to the refrigerator door. The landlord enquired about replacing the doors of the refrigerator but the company were not able to supply them as it was no possible to colour match the parts. The landlord testified that the refrigerator was five years old and had a seventeen year lifespan. As a result, she calculated that the natural depreciation amount to be \$790.00. The landlord testified that she bought the appliance for \$2,685.97 and therefore, taking into account the depreciation, claims the resultant amount from the tenants for the replacement of the refrigerator.

Analysis

The tenant failed to appear for the hearing and did not provide any evidence in advance of this hearing. As a result, I have completed the following analysis of the landlord's claim in the absence of any evidence from the tenants to dispute the evidence and base my reasons on the landlord's affirmed testimony and documentary evidence provided.

Section 37 (2) (a) of the Act states that when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged except for reasonable wear and tear.

As a result, I accept the evidence of the landlord that the tenants failed to leave the condition of the rental suite reasonably clean and undamaged and find that there is sufficient evidence before me on the balance of probabilities, as documented above, which allows for monetary compensation to the landlord in the amount of \$5,000.00

As the landlord has been successful in her claim, she is also entitled to recover from the tenants the \$50.00 filing fee for the cost of this application pursuant to Section 72 (1) of the Act. Therefore, the total amount payable by the tenants is \$5,050.00. As the landlord already holds \$1,300.00 in deposits, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38 (4) (b) of the Act. As a result, the landlord is awarded \$3,750.00.

Conclusion

For the reasons set out above, I grant the landlord monetary compensation pursuant to Section 67 of the Act in the amount of **\$3,750.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and 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: December 12, 2013

Residential Tenancy Branch

