



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAGSEN REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement, for damage to and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified he served the Tenant with the Notice of Hearing and Application by registered mail, sent on October 17, 2013. Under the Act the Tenant was deemed served five days later. Furthermore, the Agent for the Landlord testified that when he checked the tracking information for the mail, it was indicated that the mail had been delivered to the Tenant. Despite the Tenant not appearing at the hearing, I find the Tenant has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began February 1, 2013, with the parties signing a written, fixed term tenancy agreement, with a term of eight months, ending on September 30, 2013; and the rent was set at \$1,390.00 per month, payable on the first, and the Tenant paid a security deposit of \$695.00 (the "Tenancy Agreement").

The rental unit was in a building regulated under the *Strata Property Act*. As a term of the Tenancy Agreement the Tenant was required to and did sign a Form K, which

acknowledges the Tenant received the current bylaws of the strata corporation and an agreement by the Tenant to comply with these bylaws. The Tenancy Agreement and the Form K indicated the Tenant was the only person allowed to occupy the rental unit.

In late February of 2013, the Tenant had a second person move into the rental unit, without the prior written consent of the Landlord, as required under the Tenancy Agreement. The Tenant also did not have this person complete a Form K, which is a contravention of the strata bylaws, as provided to the Tenant on January 31, 2013.

Despite several warnings from the strata corporation and from the Agent for the Landlord, the Tenant did not have the additional person approved by the Landlord or complete a Form K. The strata corporation began to fine the Landlord for this breach of the bylaws, and the total amount of fines amounted to \$800.00. The Landlord now claims for the loss of **\$800.00**. A copy of the invoice in this amount was submitted in evidence.

The Landlord further claims for cleaning of the rental unit, repair of a set of mini-blinds, and for repairs and painting of several walls.

The Landlord had both incoming and outgoing condition inspection reports performed. Comparing the incoming and outgoing reports, the baseboards in the rental unit were left dirty; the kitchen countertops oven, exhaust fan and hood were left oily and unclean; the window blinds in the living room were damaged; there was some damage to the walls and trim in the living room, master bedroom, second bedroom and laundry room; and the carpets were not properly cleaned.

The Agent for the Landlord testified that the rental unit had been painted approximately three years ago. The Agent for the Landlord acknowledged there were some scratches and nail holes noted on the incoming condition report; however, the Agent testified there were many more scrapes and scratches on the walls in certain areas and around the entrance way to the rental unit.

In evidence the Landlord has submitted photographs of the above, as well as invoices for **\$504.00** (comprised of \$100.00 for replacing the mini blinds, \$375.00 for painting the areas allegedly damaged by the Tenant and \$5.00 to replace a light bulb, plus applicable taxes), and **\$294.00** for general cleaning of the above areas and shampooing the carpets.

Analysis

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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenant breached the Tenancy Agreement and section 37 of the *Act* by failing to clean the rental unit to a reasonable standard, by failing to make necessary repairs to the walls of the rental unit and by damaging the window blinds and these breaches have caused losses to the Landlord. I accept the undisputed evidence of the Landlord on these issues.

I allow the Landlord **\$294.00**, for the general cleaning and carpet shampooing.

While I find that the Tenant must compensate the Landlord for the painting, I must also account for the useful life expectancy of interior paint in a rental unit. Under policy guideline 40 the useful life of interior paint is four years. Therefore, as the Agent for the Landlord claimed the paint was three years old, I reduce the amount claimed for painting by 75% as depreciated, and award \$93.75 for painting, \$5.00 for the light bulb, and \$100.00 for the mini blinds amounting to **\$198.75**.

I also find the Tenant breached the Tenancy Agreement and strata bylaws by failing to comply with the Tenancy Agreement and strata bylaws by having an extra occupant in the rental unit and this caused the Landlord to suffer a loss of \$800.00 in fines. Therefore, I allow the Landlord **\$800.00** for this claim.

I also find the Landlord mitigated all these losses in a reasonable manner.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Therefore, I find that the Landlord have established a total monetary claim of **\$1,342.75** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposit of **\$695.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$647.75**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant breached the Act, the Tenancy Agreement and the strata bylaws, by having an additional occupant in the rental unit, by failing to clean the rental unit to a reasonable standard and by failing make repairs before he vacated the rental unit. The Landlord has proven they suffered losses, may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due.

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: January 31, 2014

Residential Tenancy Branch

