



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNDC, MNSD, O, FF
Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; her witness and the tenant. The landlord did have 2 other witnesses available but they were not called to provide any testimony.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for damage to and cleaning of the rental property and for 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)*.

It must also be decided if the tenant is entitled to a monetary order for return of all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on March 3, 2011 for a 1 year fixed term tenancy beginning on April 1, 2011 that converted to a month to month tenancy beginning on April 1, 2012 for a monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$500.00 and a pet damage deposit of \$200.00 paid.

The parties agree the tenancy ended on September 30, 2013; that a move out condition inspection was completed on that date; and that the tenant agreed, by signing the appropriate section of the Condition Inspection Report, that the landlord could retain both the security and pet damage deposit for damage done and cleaning required of the rental unit.

The landlord has provided into evidence a copy of the Condition Inspection Report recording the condition of the rental unit and residential property both at the start of the tenancy. In addition, the landlord has provided several photographs of the condition of the unit and property at the start and end of the tenancy.

The landlord seeks compensation as follows and has submitted receipts for services and supplies:

Description	Amount
Countertop replacement	\$905.83
Cabinet Repairs	\$78.73
Blind Replacement	\$60.97
Shower Surround	\$308.47
Storm door repair	\$26.78
Recycle bin replacement	\$33.58
Cleaning (interior)	\$147.84
Cleaning (exterior – including yard and structures)	\$280.00
Landfill fees	\$60.00
Wall/Ceiling Repairs and Painting	\$517.92
Flooring (carpet replacements; living room; den; bathroom; basement)	\$1,888.89
Total	\$4,309.01

In addition the landlord seeks compensation in the amount of \$1,000.00 for lost revenue as she was unable to re-rent the unit until the repairs and cleaning was completed and \$141.34 for utilities for the same period of October 2013.

The tenant testified that the countertops were damaged at the start of the tenancy despite her signing the Condition Inspection Report indicating that they were in good shape. The tenant also submits that it was the type of paint used by the landlord that caused the problems with the countertops. The landlord testified melamine paint was used as directed for countertops.

The tenant submits that she was unaware of any problems with the shower surround and that any of the damage in the bathroom was a result of the lack of a window in the bathroom. The landlord testified a functional fan was installed in the bathroom and should have been use to evacuate moisture.

The tenant submits the blinds were also damaged at the start of the tenancy and that they just got worse. There is no notation of any damage to any blinds at the start of the tenancy in the Condition Inspection Report.

The tenant submits that the ceiling stain the landlord seeks compensation for was existing damage resulting from a problem with the roofing. The landlord submits that

the damage she seeks compensation for is the location where the tenant installed a satellite dish without the landlord's permission.

The tenant submits that she had the carpets professionally cleaned but did not provide receipts. The landlord's witness who attended the move out inspection testified she asked for the receipts and was told by the tenant that she would get them to her but the tenant never did.

The landlord submits that they vacuumed the carpets several times and each time got more and more debris out of the carpeting. The tenant acknowledges staining in the den carpet as her responsibility.

Analysis

Section 38(4) stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

As the tenant agreed, in writing, that the landlord could retain the deposit in accordance with Section 38(4) I find the tenant cannot now change her mind and seek to have it returned. I therefore dismiss the tenant's Application for Dispute Resolution in its entirety.

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 based on the testimony of both parties and the landlord's documentary and photographic evidence the landlord has establish that the damage to the rental unit and residential property exists. I am also satisfied that damage results from the tenant's failure to comply with her obligations under Section 37 of the *Act*.

I find the landlord has established the value of the loss as noted in the table above, and by the inability for the landlord to be able to re-rent the unit for a month after the tenancy ended.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$5,550.35** comprised of \$1,000.00 loss revenue; \$141.34 utilities; \$4,309.01 for damage to the property and unit; and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and pet damage deposit held in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$4,850.35**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord 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: February 04, 2014

Residential Tenancy Branch

