



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 PERFORMANCE REALTY & MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for damage to the unit, site or property, to keep all or part of the security deposit and pet damage deposit, and to recover the filing fee.

An agent for the landlord, "JB", (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide his evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") and the Application for Dispute Resolution (the "Application") was considered. The agent testified that the Notice of Hearing, Application and evidence was served on the tenant by registered mail on January 21, 2014. The agent provided a registered mail tracking number in evidence and confirmed that although the package was returned as "unclaimed", the agent saw the tenant on February 27, 2014, and arranged to meet on February 28, 2014. The agent testified that on February 28, 2014, when the tenant attended the landlord's "satellite" office in Whistler, BC, the agent hand delivered the registered mail package which was previously returned to the landlord as "unclaimed", to the tenant and that the tenant accepted the registered mail package on February 28, 2014. Based on the above, and without any evidence to prove to the contrary, I accept that the tenant was sufficiently served under the *Act* on February 28, 2014.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the fixed term tenancy agreement was submitted in evidence. A fixed term tenancy began on August 1, 2013, and required vacant possession of the rental of the rental unit as of November 30, 2013. Monthly rent in the amount of \$1,200.00 was due on the first day of the month and then by mutual agreement of the parties, increased to \$1,450.00 per month on or about November 30, 2013. A security deposit of \$600.00 was paid by the tenant, which the landlord continues to hold.

The landlord has claimed \$574.05 comprised of \$247.92 for cleaning, \$175.10 for drywall repairs, and \$151.03 to repair damaged dishwasher door hinges. The landlord submitted a copy of the condition inspection report in evidence in support of the all three portions of the landlord's claim.

The landlord has claimed \$247.92 for cleaning the rental unit which, according to the agent, was left in a dirty condition by the tenant at the end of the tenancy. The agent referred to the condition inspection report submitted in evidence which the agent stated supports the landlord's claim that the rental unit required cleaning. Invoice #12081 was submitted in evidence in the amount of \$247.92 and indicates the required cleaning needed for the rental unit.

The landlord has claimed \$175.10 for drywall repairs. The agent clarified that although the original invoice submitted was in the amount of \$275.10 for drywall repairs, the landlord was able to arrange for the owner of the rental property to pay \$100.00 of the total bill, thereby reducing the tenant's portion to \$175.10. The agent referred to an e-mail submitted in evidence, which indicates that the tenant dated December 12, 2013, where the tenant states that she understands the drywall repair and thanks the agent for arranging for the owner to pay the other \$100.00 portion of the drywall damage repair bill and that she agrees to that amount. The agent also referred to the condition inspection report which supports that there was damage to a wall. A copy of the drywall repair invoice #3968 was submitted in evidence.

The landlord has claimed \$151.03 to repair the damaged dishwasher door hinges. The condition inspection report refers to the dishwasher "leaking". The agent referred to the dishwasher repair invoice #1461112913 submitted in evidence. According to the invoice, the dishwasher repair was comprised of two visits, and was "leaking due to bent door hinges", which had to be disassembled and replaced. The total invoice was for

\$151.03. The agent stated that prior to the tenant moving into the rental unit, the dishwasher worked fine and did not leak.

Analysis

Based on the landlord's documentary evidence and the agent's undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

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.

Landlord's claim for cleaning costs – The landlord is seeking \$247.92 for cleaning the rental unit which, according to the agent, was left in dirty condition by the tenant. The landlord submitted an invoice that I find supports that the rental unit required cleaning as claimed. I find that the condition inspection report submitted in evidence supports that the rental unit required cleaning at the end of the tenancy. Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[emphasis added]

Based on the above, I find the tenant breached section 37 of the *Act* by failing to leave the rental unit in reasonably clean condition at the end of the tenancy. Given the above, I find the landlord has met the burden of proof in proving this portion of their claim. Therefore, I grant the landlord **\$247.92** for cleaning costs as claimed.

Landlord's claim for drywall repairs - The landlord has claimed \$175.10 to repair drywall damaged by the tenant. I find the condition inspection report, invoice, and the e-mail submitted in evidence supports that the tenant caused the drywall damage and the cost being claimed against the tenant. Given the above, I find the landlord has met the burden of proof for this portion of their claim and I grant the landlord **\$175.10** in drywall damages as claimed.

Landlord's claim for dishwasher door repair - The landlord has claimed \$151.03 to replace the damaged door hinges of the rental unit dishwasher. I find the condition inspection report supports that the dishwasher was leaking at the end of the tenancy, and that the repair invoice supports that the leak was caused by bent dishwasher door hinges that required replacement to fix the dishwasher leak. Based on the above, I find the landlord has met the burden of proof for this portion of their claim and I grant the landlord **\$151.03** for the dishwasher repair as claimed.

As the landlord's application had merit, I grant the landlord the recovery of the filing fee in the amount of **\$50.00**.

I find the landlord has established a total monetary claim in the amount of **\$624.05**, comprised of \$247.92 for cleaning costs, \$175.10 for drywall repairs, \$151.03 for dishwasher repairs, plus the \$50.00 for the recovery of the filing fee. The landlord continues to hold the tenant's security deposit of \$600.00 which has accrued \$0.00 in interest since the start of the tenancy.

I ORDER the landlord to retain the tenant's full security deposit of \$600.00 in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$24.05**. If the landlord requires enforcement of the monetary order, this order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord has established a total monetary claim of \$624.05 described above. The landlord has been ordered to retain the tenant's full security deposit of \$600.00 in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$24.05.

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: April 14, 2014

Residential Tenancy Branch

