



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for money owed or compensation for damage or loss under the Act, and an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail and that the Canada post track history shows the tenant signed for the package on February 7, 2014. A Canada post tracking number was provided as evidence of service. I find that the tenant has been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on November 1, 2012. Rent in the amount of \$1,500.00 was payable on the first of each month. A security deposit of \$750.00 was paid by the tenant. The tenancy ended on July 5, 2013.

The landlord stated a move-in and move-out condition inspection report was completed. Filed in evidence is a copy of the report.

The landlord claims as follows:

a.	Cleaning costs	\$ 384.00
b.	Carpet cleaning	\$ 126.00
c.	Broken lawn mower	\$ 260.00
d.	Overholding rent July 1 to July 6	\$ 300.00
e.	Hotel	\$ 160.00
f.	Filing fee	\$ 50.00
	Total claimed	\$ 1,280.00

Cleaning costs

The landlord testified that the tenant failed to clean the rental unit at the end of the tenancy. The landlord stated the tenant agreed in the move-out condition inspection that items were left dirty. The landlord stated that she had to pay to have these items cleaned in the amount of \$384.00. Filed in evidence are two invoices, one is for cleaning the rental unit, and the second is for cleaning the windows.

Carpet cleaning

The landlord testified that the tenant failed to clean the carpets at the end the tenancy and it was agreed in the move-out condition inspection that they were left dirty. The landlord stated that she had to have the carpets cleaned and seeks to recover the amount of \$126.00. Filed in evidence is a receipt for carpet cleaning.

Broken lawn mower

The landlord testified that the tenant broke the lawn mower as the shaft was bent and was not fixable. The landlord stated the lawn mower was new at the start of the tenancy. Filed in evidence is a work order, which stated the cost of the repair is not feasible.

Overholding rent July 1 to July 6.

The landlord testified that the tenant was overholding the rental unit from July 1 to July 5, 2014. The landlord seeks to recover rent based on a per diem amount of \$300.00.

Filed in evidence is the notice to end tenancy with an effective vacancy date of June 30, 2013.

Hotel

The landlord testified that she seeks to recover the cost of a hotel as this was an expense that she would not have incurred if the tenant had vacated the premises on June 30, 2013 as she was moving into the rental unit. The landlord stated that because the tenant was still vacating the premises late on July 5, 2013, and they had not cleaned the premises, she had no other option other to stay in a hotel for the one night. The landlord seeks to recover the amount of \$160.00. Filed in evidence is a receipt for hotel cost.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage.

Cleaning costs

The evidence of the landlord was the tenant failed to clean the rental unit and agreed in the move-out condition inspection report that items were left dirty. I have reviewed the move-out condition inspection report and the report supports the landlord's position. As a result, I find the tenant breached the Act, when they failed to leave the rental unit reasonably cleaned and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$384.00**

Carpet cleaning

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets if vacating after a tenancy of one year.

In this case, the tenant agreed in the move-out condition inspection report that the carpets were left dirty. As a result, I find the tenant has breached section 37 of the Act, when they failed to clean the carpets. Therefore, I find the landlord is entitled to compensation for the cost of having the carpets cleaned in the amount of **\$126.00**.

Broken lawn mower

The evidence of the landlord was the tenant was supplied with a new lawn mower at the start of the tenancy and that mower was broken at the end of the tenancy do to a bent shaft. This is support by the work order filed as evidence. As a result, I find the tenant breached the Act, when they failed to repair or replace the mower as a bent shaft would not be considered normal wear and tear. However, the landlord has not provided a comparison, in order for me to determine if the amount claimed is reasonable. Therefore, I will allow a nominal amount for the cost of the lawn mower in the amount of **\$50.00**.

Overholding rent July 1 to July 6.

In this case, the notice to end tenancy had and effective vacancy date of June 30, 2013, the tenant failed to vacate the premises as required. As a result, I find the tenant breached the Act, when they failed to leave the rental unit on the effective vacancy date. I find the landlord is entitled to recover occupancy rent for the time period the tenant oveheld the premises, which was July 1 – 5, 2013. As the monthly rent was \$1,500.00 and July has 31 days, I find the daily per diem rent is \$48.38. Therefore, I grant the landlord compensation for the five day the unit was oveheld by the tenant in the amount of **\$241.93**.

Hotel

As I have previously found the tenant breached the Act, when they failed to leave the rental unit on the effective vacancy date and when they failed to clean the rental unit. The landlord suffered an additional cost of having to stay in a hotel for one night, as the landlord was moving into the rental unit. I find the cost would not have been incurred if the tenant had complied with the Act. Therefore, I grant the landlord the cost of staying in the hotel for the one night. This is supported by the receipt filed in evidence. Therefore, I find the landlord is entitled to recover the cost of the hotel in the amount of **\$160.00**.

I find that the landlord has established a total monetary claim of **\$1,011.93** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$750.00** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 for the balance due of **\$261.93**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: May 15, 2014

Residential Tenancy Branch

