



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MacDonald Commercial Res. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent and a witness for the landlord company attended the hearing, however, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on March 12, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participants who joined the call were the landlord's agent and witness. The landlord's agent testified that the documents were served on that date and in that manner and has provided a copy of a Canada Post receipt and tracking number, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord has also provided evidentiary material to the Residential Tenancy Branch and has provided proof that the tenant was served with that material by registered mail.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more particularly for loss of revenue for breaching the terms of a fixed term tenancy and recovery of monies paid to the tenant in error?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this tenancy began on November 1, 2013 and was fixed for a term to expire on April 30, 2014, although the tenant moved out of the rental unit on February 28, 2014. Rent in the amount of \$1,300.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$650.00 which is still held in trust by the landlord.

The landlord's agent further testified that the tenant gave notice to end the tenancy sometime in February, 2014 by way of email. The landlord's agent subsequently spoke to the tenant on the phone and advised that since the term of the tenancy was fixed, the tenant would be liable for rent until the rental unit was re-rented. A new renter was secured and was originally expecting to move in May 1, 2014 but for various reasons and issues encountered by the new tenant, that tenancy was delayed until June 1, 2014.

The tenant had paid rent during the tenancy by way of electronic transfers and put a cancellation on the rent payment for March 1, 2014. Thereafter, the tenant asked an employee of the landlord for a refund of March rent, which was provided to the tenant. Therefore, the tenant was paid \$1,300.00 by the landlord for an overpayment of rent when there was no overpayment. The landlord's agent and the tenant were in communication by email, and the landlord's agent asked the tenant to return the money, but all future emails from the tenant were silent with respect to that and the tenant did not respond to the request. The landlord claims that amount back from the tenant as well as rent for the months of March and April, 2014.

The tenant also left damages in the rental unit and a move-in and a move-out condition inspection report has been provided. A signature of the tenant appears for the move-in and the move-out portions, and above the tenants' signature, the document states: *"By signing our name below I/we accept the Move-In/Move-Out Checklist as a part of the rental agreement and agree that it is an accurate account of the condition and contents of said premises and acknowledge receiving a copy hereof. I/we also agree to pay for any damages to the property and contents other than normal wear."* Also attached is a document showing that the move-out portion was completed on March 1, 2014 and the

tenant's forwarding address. It shows an estimated cost of repairs at \$300.00 and states "subject to the actual Bill." The tenant has signed that document as well, but has not agreed to that deduction from the security deposit.

The reports show that the floors in the rental unit were in satisfactory condition at the outset of the tenancy but were scratched at move-out. The landlord's agent testified that the rental unit was brand new at the commencement of the tenancy and several boards in the laminate floor in the living-room/dining room area were severely scratched at the end of the tenancy. The landlord's employee who completed the move-out condition inspection report later told the landlord's agent that \$300.00 was written on the report as an estimate for the cost of repairs which the employee based on previous experience with hardwood, but the landlord's agent testified that the employee has since learned that repairs to laminate are different than hardwood. An estimate from the original installer has also been provided which states that 25 boards require replacing, and allowing 35 boards due to damage during removal, the cost is \$2,495.45 plus GST. The estimate also states that the price includes material, labour and 7% PST. The landlord claims \$2,720.22 for that repair and testified that the floor boards have not yet been replaced.

The landlord has also provided an invoice in the amount of \$90.00 which shows that it's for replacing 1 halogen light bulb in the bathroom and for painting a scratched door in the bedroom. The condition inspection reports show that the bathroom and the closet of the bedroom were in satisfactory condition at the beginning of the tenancy, and the paint was chipped or broken and the bathroom bulb was missing at the end of the tenancy. The landlord claims \$90.00 for the recovery of the invoiced amount.

The landlord's witness is also an employee of the landlord company and testified that it is the habit of the landlord's agents to advertise immediately when they know of a rental unit coming available for rent. Although no evidence has been provided, the witness believes that in February, 2014 the rental unit was advertised on the landlord's website as well as on Craigslist.

The witness also testified that the notation on the move-out condition inspection report that shows an estimate of \$300.00 for the floor damage was based on that employee's experience with hardwood, as the witness was later told. The employee also told the witness that the employee called a flooring company for an estimate per square foot and received a quote of about \$1,710.00, but replacing flooring in the center of a room is a lot different than replacing an entire floor from wall to wall, and the witness obtained the estimate from the original installer who was at the rental building at the time and agreed to look at it. The written estimate provided for this hearing is a result of that viewing by the original installer, and the landlord claims \$2,720.22.

Analysis

Firstly, with respect to the landlord's claim for loss of rental revenue, the *Act* requires a party who makes a claim to do whatever is reasonable to mitigate any loss. The landlord's witness testified that the rental unit would have been advertised for rent in February, 2014 but does not know the date or what date the advertisements may have stated as an availability date, nor has any evidence of advertisements been provided. However, the tenant did not provide sufficient notice, and had the tenant given notice, that notice would not take effect until the end of March, 2014. In the circumstances, I am not satisfied that the landlord has mitigated any loss of revenue for April, 2014 rent, but I am satisfied that the landlord is entitled to recover rent for March.

With respect to the landlord's application for recovery of an overpayment of rent that was given to the tenant in error, I have reviewed the evidentiary material, and I am satisfied that the landlord has established a monetary claim for \$1,300.00.

The regulations to the *Residential Tenancy Act* specify that move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the commencement and end of the tenancy. Also, the *Act* requires a tenant to repair any damage caused by the tenant or the tenant's guests except for normal wear and tear. I have reviewed the condition inspection reports and I find that the tenant acknowledged that the reports are accurate and that the damage claimed by the landlord has been established. I also find that the tenant was well aware that the landlord's claim for repair to the laminate floors of \$300.00 was an estimate only and subject to change depending on the actual cost. After putting the tenant on notice for a claim in that amount, the landlord received another estimate of \$1,710.00, which is the amount claimed on the Landlord's Application for Dispute Resolution. Having found that the tenant has been served with the Application, I am also satisfied that the tenant has been put on notice of that amount of the claim. The landlord then served the evidence package to the tenant increasing the claim for floor repair to \$2,495.45 plus GST, and increasing the monetary claim as a whole from \$1,900.00 to \$5,460.22 by adding a Worksheet to the end of the evidence package. In the circumstances, I am not satisfied that the landlord has justified the increase, and I find that the landlord has established the cost of \$1,710.00 for the laminate flooring. I am also satisfied that the landlord has established the claim of \$90.00 for paint chips and light bulbs.

The landlord also seeks an order permitting the landlord to keep all or part of the security deposit. The tenant provided the landlord with a forwarding address in writing on March 1, 2014 on the move-out condition inspection report, and the landlord filed the

application for dispute resolution on March 7, 2014, which I find is within the 15 days provided for in the *Act*. Having found that the tenant is indebted to the landlord, I also order the landlord to keep the security deposit in partial satisfaction of the claim.

In summary, I find that the landlord has established a monetary claim as against the tenant in the amount of \$1,300.00 for recovery of the refund given to the tenant in error, \$1,300.00 for rent for the month of March, 2014, and \$1,800.00 for damages, for a total of \$4,400.00. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of filing. I order the landlord to keep the \$650.00 security deposit, and I grant the landlord a monetary order for the difference in the amount of \$3,800.00.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$650.00 security deposit, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,800.00.

This order is final and binding and may be enforced.

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: June 30, 2014

Residential Tenancy Branch

