



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlords to keep all of the Tenant's security deposit for damages to the rental unit, and to recover the filing fee for the cost of making this Application.

One of the Landlords appeared for the hearing and provided affirmed testimony and written evidence in advance of the hearing. However, there was no appearance by the Tenant during the one hour duration of the hearing or any submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the documents for this hearing.

The Landlord explained that after the tenancy ended on March 31, 2014, the Tenant had provided her with a forwarding address on the move-out Condition Inspection Report (the "CIR"). As a result, the Landlord registered mailed written evidence to the address provided on the CIR. The Landlord provided a copy of the Canada Post tracking number as evidence for this method of service. The Canada Post website indicates that this was received and signed for by the Tenant on April 9, 2014.

However, the Landlord explained that in the interim time she contacted the Residential Tenancy Branch regarding her obligations in returning the Tenant's security deposit and was informed about the need to make an Application. As a result, the Landlord made the Application on April 7, 2014 and was issued the hearing documents on April 9, 2014, detailing the date and time of this hearing, which the Landlord served on the same day by registered mail to the Tenant's address provided on the CIR.

The Landlord provided the Canada Post tracking number as evidence for this method of service but the Canada Post website indicates that the documents are in transit. The Landlord explained that Canada Post lost the paperwork; the Landlord provided written evidence to substantiate this. As a result, the Landlord re-served the documents for this

hearing and her written evidence to the Tenant's forwarding address on May 20, 2014, but explained that it came back to her based on a refusal of the Tenant to accept the documents after attempted delivery.

Section 90 of the Act states that documents served by mail are deemed to have been received five days after they are mailed. A party cannot avoid service by a failure or neglect to pick up mail and this reason alone cannot be used to make a review application.

Based on Landlord's testimony and written evidence that the Tenant had received documents to the same addressed used to serve the documents for this hearing, I find that the Landlord served the Tenant in accordance with the *Residential Tenancy Act* (the "Act") and these are deemed to have been received by the Tenant on May 25, 2014.

As a result, I continued to hear the Landlord's evidence in relation to her claim to keep the Tenant's security deposit.

Issue(s) to be Decided

- Are the Landlords entitled to keep all of the Tenant's security deposit in full satisfaction of a monetary claim for damages to the rental suite?

Background and Evidence

The Landlord testified that a written agreement for this tenancy was completed and was for a fixed term of six months starting on October 1, 2013. Rent was established at the start of the tenancy in the amount of \$1,800.00 which was subsequently reduced after two months into the tenancy to \$1,700.00, payable on the first day of each month.

The Tenant paid \$900.00 on September 6, 2013 as a security deposit which the Landlords still retain. The Tenant vacated the rental suite by written notice in accordance with the fixed term tenancy agreement on March 31, 2014.

The Landlord and Tenant both completed a condition inspection of the rental unit at the start of the tenancy on October 8, 2013 and at the end of the tenancy on March 31, 2014. The Landlord explained that during the move-out condition inspection the Tenant had not cleaned the rental suite and there were damages. The Landlord testified that when they were both examining the unit together, the Tenant was unsuccessfully attempting to clean and rectify each issue. For example, when the Tenant was shown

the dirt left behind the fridge which was on rollers, the Tenant brushed the dirt away; when the Tenant was shown a repair, she tried to fix it during the inspection.

The Landlord explained that the Tenant was in a hurry and was trying to rush the inspection. The Landlord and Tenant completed the move-out CIR together and compiled a document of a list of things that were outstanding that needed to be rectified; this document was attached to the CIR which was submitted in written evidence. The Tenant signed the CIR stating they were not in agreement with the condition of the rental suite as recorded by the Landlord.

The Landlord testified that the Tenant requested more time to complete these items and the Landlord offered the rest of the day and night to get it done as she was anticipating, but unsure of the arrival of her new renters for the next day; however, the Tenant failed to complete the work by April 1, 2014 because they needed more time which the Landlord was not prepared to give.

The Landlord provided in written evidence a document that had been completed by the Landlord on April 1, 2014, numbering the outstanding repairs required. The Tenant signed this document stating that she agreed to all of the repairs needed apart from the scratches to the laminate flooring and the broken sink plug.

The Landlord also provided comparative photographic evidence indicating the condition of the rental suite at the start and at the end of the tenancy. The Landlord testified that the amount of damage caused by the Tenant to the rental suite exceeds the Tenant's security deposit but only seeks in this Application to retain the security deposit for the following reasons:

- **\$300.00** for cleaning costs. The Landlord testified that the Tenant had left the walls, doors, wood trim, and window panes dirty, explaining that they contained a film which had to be washed as well as children's handprints, smudges and scuff marks. The Landlord referred to her photographic evidence to support this testimony as well as the CIR. The Landlord testified that the rental suite was not left reasonably clean; the bathroom was dirty, the curtains needed cleaning and the rental suite had not been dusted. As an example, the Landlord referred to photographic evidence showing dirt behind the refrigerator. The Landlord testified that she contacted a company who informed her that it would cost \$300.00 to clean the rental suite due to it being required immediately. However, the Landlord explained that she agreed with the new renters that they would clean the rental suite and that at the end of the tenancy she will clean the renter's mess.

- **\$16.80** for the replacement of a bug screen. The Landlord testified that the Tenant put two holes in one of the bug screens and provided photographic evidence to show this damage. The Landlord provided a receipt for the replacement cost of this screen.
- **\$100.00** for the repair and repainting of the 'zebra' colored room. The Landlord testified that the Tenant had caused multiple nail holes in the walls which all needed to be filled, sanded and painted. The Landlord testified that when this was brought to the Tenant's attention the Tenant stated that if she filled them in then she would also have to paint the walls which she was not going to do.
- **\$30.00** to glue back the laminate countertop. The Landlord provided photographs which show the side of the laminate countertop coming away from the edge. The Landlord testified that she had to glue and repair this back on before the new renters moved in.
- **\$30.00** for the repair costs associated with a broken wooden gate. The Landlord provided a photograph which indicated a broken wooden gate.
- **\$225.00** for inside window cleaning. The Landlord testified that there are 11 windows in the rental suite and the Tenant left 9 windows dirty at the end of the tenancy. The Landlord testified that companies charge \$25.00 to clean each window and therefore claims for a total of 9 windows that required cleaning.
- **\$200.00** for reinstallation costs. The Landlord claims this amount in labor costs associated with the reinstallation of the rental unit closet doors. The Landlord testified that at the start of the tenancy the Tenant took off all the closet doors in the rental unit to give her a sense of space; however, the Tenant failed to re-hang these and even attempted to hang a door during the move-out condition inspection without any success. The Tenant also removed a shower hose, a shelf in the front room and window blinds which also had to be re-installed as the Tenant stated that she could not do this by herself.
- The Landlord testified that the Tenant had scratched the laminate flooring but did not provide a cost being claimed for this as the Landlord was unsure of what and how she should claim for this, citing the fact that in order to repair it she would have to relay it with new flooring. The Landlord provided a receipt for the cost of the original flooring in the amount of \$1,000.00 which was installed on August 13, 2013 at the start of the tenancy, indicating that it was brand new when the Tenant took occupancy.

Analysis

I find that the Landlord made the Application to keep the Tenant's security deposit within the time limits stipulated by Section 38(1) of the Act.

Section 37(2) of the Act requires a Tenant to leave a rental suite reasonably clean and undamaged at the end the tenancy. The Act does not require a Landlord to give additional time and opportunity for a Tenant to complete repairs or clean a rental suite after the tenancy has ended or after a scheduled move-out condition inspection.

In addition, Section 21 of the *Residential Tenancy Regulation* explains that a CIR can be used as evidence of the state of repair and condition of the rental suite unless there is a preponderance of evidence provided by the Landlord or Tenant to suggest otherwise.

In this case, I find that on the balance of probabilities that the: undisputed oral, written and photographic evidence provided by the Landlord is compelling and supports the case that the Tenant failed to leave the rental suite clean and undamaged at the end of the tenancy in accordance with the requirements of the Act.

Furthermore, I pay particular attention to the Landlord's written evidence which contains a document completed by the Landlord and signed by the Tenant and the Tenant's witness, that they were in agreement with the cleaning and repairs that were required at the end of the tenancy apart from the scratches to the laminate flooring and a broken sink plug. It is this written acknowledgment by the Tenant that leaves me no doubt that the Tenant should be held responsible for the losses of the Landlords.

Based on this, and the lack of preponderance of evidence from the Tenant to dispute the compelling evidence of the Landlord, I find that the Landlord has proved her case for the cleaning of the rental suite, the cleaning of the windows, the replacement of the bug screen, the repair of the 'zebra' room, the repair to the countertop and the re-installation of the items. I also find that the amounts being claimed for the cleaning and repairs are appropriate.

In relation to the undisputed evidence of the Landlord regarding the broken gate, also evidenced by the photographs, I accept the Landlord's evidence on the balance of probabilities that this was caused by the Tenant and find that the Tenant is also responsible for this repair cost.

In relation to the damage to the laminate flooring, while the Tenant disputed that she was responsible for this, after considering all of the evidence in this case and the Landlord's evidence that this was installed new at the start of the tenancy, I find that the Tenant would have likely been responsible for this damage. However, the Landlord failed to provide sufficient evidence to verify an exact loss in order for me to award an amount for this loss but I find that, in any case, had the Landlord provided this evidence, this would have likely exceeded the amount being claimed from the Tenant in this Application.

As the Landlords have proved the Application, I find they are also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application.

Conclusion

As the Landlords have been successful in proving a case for damages that exceeds the Tenant's security deposit, I find that the Landlords are entitled to retain the Tenant's security deposit in the amount of \$900.00 pursuant to Section 38(4) (b) of the Act, in full satisfaction of the Landlords' claim.

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: July 31, 2014

Residential Tenancy Branch

