



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 10:46 a.m. in order to enable her to connect with this teleconference hearing scheduled for 10:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent (the landlord) gave sworn testimony and written evidence that she served the tenant with a copy of the dispute resolution hearing package by sending it by registered mail on May 21, 2014. She gave similar evidence of her registered mailing of the landlord's written evidence package to the tenant on September 4, 2014. In accordance with sections 88, 89 and 90 of the *Act*, the above documents were deemed served to the tenant five days after their registered mailing on the above dates.

At the commencement of the hearing, the landlord reduced the amount of her requested monetary award from \$925.00 to \$775.00. She testified that she had sent a cheque for \$100.00 to the tenant on September 23, 2014.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began as a one-year fixed term tenancy agreement on November 1, 2012. At the expiration of the initial term, this tenancy continued as a periodic tenancy until the tenant abandoned the rental unit on May 1, 2014. Monthly rent was set at \$875.00, payable on the first of each month. The landlord obtained a pet damage deposit of \$437.50 and a security deposit of \$437.50 on October 13, 2013. As noted above, the landlord continues to hold \$775.00 of the tenant's deposits at this time.

The landlord testified that the tenant gave her notice to end this tenancy in late March 2014. The landlord said that she obtained the tenant's forwarding address on March 15, 2014, when the tenant called her.

The landlord's amended application for a monetary award of \$775.00 included the following items:

Item	Amount
Repairs to Drywall, Patching and Painting	\$465.00
Cleaning (\$100.00 + \$160.00 = \$260.00)	260.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Requested	\$775.00

The landlord submitted copies of the signed joint move-in condition inspection report of October 29, 2012 and the landlord's May 1, 2014 move-out condition inspection report. The move-out report provided multiple references to the deterioration of the condition of the rental unit as a result of damage arising during the course of this tenancy. The landlord also submitted colour photographs taken at the end of this tenancy and copies of receipts and invoices documenting the losses incurred in repairing and cleaning the rental unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on a balance of probabilities and the landlord's undisputed sworn testimony, written and photographic evidence, I find that the landlord is entitled to recover the requested amounts for the repair and cleaning of the rental unit. Since the landlord has been successful in this application, the landlord is entitled to recover the \$50.00 filing fee for this application.

As the landlord has been successful in this application, the landlord is also entitled to retain the \$775.00 currently retained from the tenant's deposits plus applicable interest. No interest is payable over this period.

As the amount of the landlord's monetary award equals the amount of the retained deposits, I issue no monetary Order.

Conclusion

I order the landlord to retain the remaining \$775.00 in deposits currently held by the landlord to compensate the landlord for damage arising out of this tenancy and to recover the landlord's filing fee.

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: September 25, 2014

Residential Tenancy Branch

