



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order to retain the security deposit in satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he served the Tenant with the Notice of Hearing and the Application by registered mail, sent on July 7, 2014. The Landlord used the forwarding address provided by the Tenant. Under the Act the Tenant is deemed served with the documents five days after mailing. The Landlord testified that the mail was returned to him. I find the Tenant has been duly served under the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on July 1, 2013, with the parties entering into a written tenancy agreement. The rent was set at \$1,200.00 per month and the Tenant paid a security deposit of \$600.00 to the Landlord on June 25, 2013.

According to the submissions of the Landlord, the Tenant vacated the property around July 1, 2014. However, the Landlord is claiming that the Tenant did not remove all his garbage and debris from the rental unit as he promised to do. The Tenant was to meet the Landlord on July 3, to return the keys, complete the condition inspection report and remove the remaining garbage and debris, but did not attend the rental unit.

The Landlord claims that they spent a significant amount of money removing the debris and garbage, cleaning the rental unit and making repairs, due to the condition the Tenant left the rental unit in. The Landlord testified he only wants to retain the security deposit and will waive the balance of the claim over the amount of the security deposit.

The Landlord testified that around the end of May 2014, the toilet was plugged in the rental unit and the Landlord had a plumber attend to make repairs. The Landlord testified that the plumber informed him that the cause of the problem was toys flushed down the toilet by the Tenant's children. The Landlord testified that the Tenant had agreed to pay for the plumbing bill but did not do so. In evidence the Landlord has provided an invoice from the plumber in the amount of **\$247.80**.

The Landlord testified that the Tenant left garbage and other debris at the rental unit property. In evidence the Landlord has submitted an invoice from a hauling company for removal of "waste" from the rental unit, in the amount of **\$252.00**.

The Landlord further testified that when the Tenant moved out he failed to clean the carpets in the rental unit. In evidence the Landlord has submitted an invoice from a carpet cleaning company totaling **\$131.25**.

Lastly, the Landlord claims **\$50.00** for the filing fee for the Application.

Analysis

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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

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

I find the Tenant did not clean the unit and leave it free of debris and garbage, or make necessary repairs during the tenancy, and this has caused losses to the Landlord. This is a breach of section 37 of the *Act* which requires the Tenant to leave the rental unit reasonably clean and undamaged at the end of a tenancy. I further find the evidence indicates that the carpets were not steam cleaned when the Tenant left, as required under the *Act* and policy guidelines.

Section 7 of the *Act* states:

(1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

Based on the evidence and testimony before me, I find the Landlord took reasonable steps to minimize the losses suffered.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this *Act*, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

I find that the Landlord have established a total monetary claim of **\$681.05**, comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord may retain the deposit of **\$600.00** in partial satisfaction of the claim. The Landlord testified that he will waive any amount awarded in excess of the security deposit.

Therefore, I allow the Landlord to keep the security deposit, and find that the balance has been waived by the Landlord.

Conclusion

I find the Tenant breached the Act and the tenancy agreement by failing to return the rental unit to the Landlord reasonably clean and undamaged. I find the Tenant should have paid the Landlord for the plumbing repairs and should have removed his debris from the rental unit and cleaned the carpets before vacating.

The Landlord has proven he is entitled to keep the security deposit in partial satisfaction of the claims and I award him the security deposit. The Landlord has waived the balance owed by the Tenant.

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: November 20, 2014

Residential Tenancy Branch

