



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNR, MNDC, SS, O

Introduction

This is an application for a Monetary Order for \$3064.87, and a request for Substitute Service Order. The applicant is also requesting recovery of the \$50.00 filing fee.

Some documentary evidence, photo evidence, and written arguments have been submitted prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not the applicant has established a monetary claim against the respondent, and if so, in what amount.

Background and Evidence

The applicant testified that:

- There were three window blinds in the rental unit that were damaged by rain as a result of the tenant leaving the windows open. All three blinds were damaged beyond repair and had to be replaced. The original blinds were approximately 12 years old but were in good shape.
- The tenant left the rental unit very dirty as can be seen by the photos supplied in the evidence package and as a result they had to have the rental unit cleaned.

- The tenant had attached a painting to the wall, and when the painting was pulled off the wall it pulled off some of the paint and as a result that area had to be repainted.
- The tenant only paid half the rent for the month of April 2014, and did not vacate the rental unit until mid-May 2014, and as a result there is a full month's rent owing. He has provided copies of e-mails that show the tenant did not finish vacating the rental unit and leave the keys until May 12, 2014.
- The tenant as also failed to give him a forwarding address, and therefore since he believes the tenant will not give a forwarding address at any time, the tenant will forfeit the right to return of the security deposit in one year. He therefore believes that he should be allowed to add the amount of the security deposit onto this claim and if he cannot add the amount on at this time, he's requesting that the claim for the security deposit be adjourned until the one-year time period has passed.
- The tenant also left the carpet in the rental unit badly stained and as a result the carpet had to be replaced. The carpet was approximately 12 years old and therefore he is only asking for 20% of the replacement cost. The replacement cost was \$3286.00 and therefore he is asking for \$649.72.
- He is also requesting the recovery of the \$50.00 filing fee and \$25.00 for substitute service fee.

He is therefore requesting a monetary claim as follows:

Cost to replace window blinds	\$756.00
Cleaning cost	\$290.47
Paint	\$18.68
Unpaid rent	\$800.00 (reduced from \$875.00)
Security deposit as no forwarding address given	\$400.00
Replace carpet with laminate 20% of cost	\$649.72
Filing fee	\$50.00
Sub service application fee	\$25.00
Total	\$2989.87

The tenant testified that:

- He did leave the windows open on occasion but no more than normal and therefore he believes that this damage is just normal wear and tear.
- He cleaned the rental unit as best he could, however he admits he did miss a few things and he did not clean the carpets as he believed the landlord would just use a security deposit for carpet cleaning.

- There was a little tear in the wall when he removed a picture from the wall; however when he asked the landlord if he should fix the damage the landlord told him not to bother.
- He did not pay one half of the April 2014 rent as he had expected the landlord to keep the security deposit towards that, however since the landlord did not show up for a move out inspection he lost six hours of pay and therefore does not believe he should have to pay for any April 2014 rent.
- He believes that he moved out of the rental unit around May 2 or 3, 2014, and not mid-May as stated by the landlord and therefore he does not believe he should have to pay any rent for the month of May 2014.
- As he previously stated he had already suspected that the security deposit would be used towards carpet cleaning or April 2014 rent, and therefore he has not given the landlord a forwarding address in writing as he did not expect the return of his security deposit.

Analysis

Cost to replace window blinds and carpets

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item.

Window blinds and carpets are considered to have a useful life of 10 years, and therefore since these blinds and carpets were at about 12 years old they are considered completely depreciated and of no value.

I therefore deny the landlord's request for the cost of replacing the window blinds and carpets.

Cleaning

I will allow the landlords claim for cleaning because, although the tenant claims to have cleaned the rental unit, it is obvious from the photo evidence that this unit was left in need of significant cleaning.

Paint

I deny the landlords claim for paint because, although the landlord claims that the \$18.68 he is charging was for paint, the receipt he provided was not for paint, but was for a "Door Sweep U Shape White"

Unpaid rent

I will allow the landlords claim for unpaid rent. The tenant has admitted that he did not pay one half of the April 2014 rent, and the landlord has provided e-mail evidence that clearly shows that the tenant did not vacate the rental unit until at least May 12, 2014 and, since the rental unit was still in need of cleaning, it is my decision that the tenant is liable for one half a months rent for the month of May 2014.

Security deposit

The landlord is arguing that since the tenant has refused to give him a forwarding address, and is stating he will not do so, the tenant will forfeit the right to the return of his security deposit within one year. He therefore believes that he should be able to add the amount of the security deposit to this claim.

The landlord further argues that if he is not allowed to add the amount of the security deposit to the claim at this time, this portion of the claim should be adjourned until the one-year time period has expired.

First of all, even if the tenant had forfeited his right to the return of the security deposit, that would not allow the landlord to add the amount of the security deposit to this claim as the landlord already holds the security deposit and by adding the amount to the claim he would then be holding the amount of double the security deposit.

Secondly, in this case it has not been one year since the end of the tenancy, and therefore the tenant has not forfeited the right to the return of his security deposit and in today's hearing if a Monetary Order is issued, the amount of the security deposit will be taken into consideration as partial satisfaction of that Order.

Thirdly, even if one year had expired and the tenant had lost the right to the return of his security deposit, that does not mean that the security deposit would not be considered towards any debt or damages owed to the landlord. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the Act. Which means if the amount awarded to the

landlord does not exceed the amount of the deposit and interest, the balance may be retained by the landlord as the tenant has forfeited the right to its return.

Filing fee

Since I have allowed a substantial portion of the landlords claim, I will also allow the claim for recovery of the \$50.00 filing fee.

Sub service application fee

The landlord is claiming a \$25.00 sub service application fee; however the landlord has provided no evidence, to this hearing, to show that a sub service fee was paid and I therefore deny the claim for a sub service fee.

Therefore the total amount of the landlord's claim that I have allowed is as follows:

Cleaning costs	\$290.47
Unpaid rent	\$800.00
Filing fee	\$50.00
Total	\$1140.47

Conclusion

I have allowed \$1140.47 of the landlords claim and I therefore Order that the landlord may retain the full security deposit of \$400.00, and I have issued a Monetary Order in the amount of \$740.47.

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: November 04, 2014

Residential Tenancy Branch

