



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 dealt with a landlord's application for monetary compensation for damage to the rental unit, cleaning costs, and authorization to retain the security deposit. The landlord named two co-tenants in filing this Application but sent a hearing package and evidence to the female tenant only. As the male tenant was not served with notice of the landlord's claims and this hearing I excluded the male tenant as a named party to this proceeding.

With respect to service of the hearing package and evidence upon the female tenant the landlord testified that the hearing package was sent to the female tenant on October 19, 2014 by registered mail using her business address. The landlord testified that the evidence package had been sent to the female tenant by registered mail at her business address on September 11, 2014. The landlord provided the registered mail tracking numbers which showed that both registered mail packages were successfully delivered. The landlord also provided a copy of the female tenant's business card which contains her business address. The landlord testified that the female tenant provided this business card to the landlord for the purpose of providing the landlord with a forwarding address.

In the absence of any evidence to the contrary, I accepted the landlord's testimony with that the landlord obtained a forwarding address from the tenant and that the landlord used the forwarding address to serve the tenant which complies with the service requirements of section 89(1) of the Act. Section 59 of the Act provides that an Application is to be served upon the other party within three days of filing; however, the Act does not provide for the consequences if the three day time limit is not met. Given the service occurred in October 2014, given the date of this proceeding, I am satisfied the tenant has not been prejudiced by the landlord's failure to meet the three day time limit and I continued to hear the landlord's claims against the tenants in the absence of the tenant.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the amounts claimed against the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced July 1, 2012 and the tenants paid a security deposit of \$1,300.00. The monthly rent of \$2,600.00 was payable on the 1st day of every month.

In August 2014 the landlord discovered that the tenants had sub-let the rental unit when a third party attempted to perform a credit check with the landlord concerning a sub-tenant. The landlord testified that the tenants had sub-let the rental unit without authorization or the landlord's prior knowledge. Then, on or about August 28, 2014, the landlord received a text message from the male tenant advising the landlord that the rental unit had been vacated. A move-out inspection was set up with the male tenant and the landlord's aunt, acting as the landlord's agent, for August 30, 2015. The male tenant failed to appear for the inspection.

Upon inspection of the rental unit, the landlord discovered the following:

1. One of the two panels of the mirrored closet door was broken during the tenancy. The tenants replaced the broken panel with a different door that does not match the other side and the handle is in the wrong location. The landlord requested return of the original panel so that it could be repaired but the tenant has not provided it. The landlord seeks \$862.65 to replace the closet door to match the other doors in the unit. This amount is supported by a quote for \$413.08 + tax for the door. The landlord testified that a verbal quote of \$400.00 was given for delivery and installation.
2. The stone countertop in the kitchen was damaged by what appears to be a hot pot. The landlord obtained a quote for \$2,573.55 to replace the damaged section of countertop.
3. The shower head in the master bedroom was broken from misuse and a new one of similar quality will cost \$200.80 to purchase and install. The landlord testified that the landlord has installed an inferior quality shower head temporarily.
4. The tenants failed to sufficiently clean the rental unit. The carpets, balcony, and window tracks required cleaning and the kitchen, including the oven, microwave, fridge and fans, required cleaning especially since many of the appliances were

left with an oily residue. The landlord provided a receipt for \$300.00 in cleaning costs.

The landlord provided photographs of the closet door (before and after the tenancy) and a section of the damaged countertop.

The landlord submitted that the rental unit is in a “high quality” condominium building that is only three years old.

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 section 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.

Based upon the undisputed evidence of the landlord, I accept that the tenants damaged the rental unit during the tenancy and did not sufficiently repair the damage as required under the Act. Therefore, I find the landlord entitled to compensation from the tenant for the landlord's losses.

I accept the undisputed evidence from the landlord as to the replacement cost of the damaged items. However, awards for damages are intended to be restorative and where an item has a limited useful life it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*. Therefore, I award the landlord compensation for the damaged items as follows:

Damaged item	Average useful life (in years)	Remaining useful life (in years)	Replacement cost (\$)	Depreciated value at time of loss (\$)
Closet door	20	17	862.65	733.25

Countertop	25	22	2,573.55	2,264.72
Showerhead	15	12	200.80	<u>160.64</u>
TOTAL AWARD for DAMAGE				3158.61

Based upon the landlord's undisputed evidence, I also accept that the tenants failed to leave the rental unit reasonably clean as they are required to do under the Act. Therefore, I award the landlord \$300.00 for cleaning, as requested.

In addition, I award the landlord recovery of the \$50.00 filing fee paid for this Application.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord and I provide the landlord with a Monetary Order for the balance due to the landlord, calculated as follows:

Damage to rental unit	\$ 3,158.61
Cleaning	300.00
Filing fee	50.00
Less: security deposit	<u>(1,300.00)</u>
Monetary Order for landlord	\$ 2,208.61

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,208.61 to serve and enforce.

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: April 22, 2015

Residential Tenancy Branch

