



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 Landlord on September 16, 2014 for a Monetary Order for damage to the rental unit, to keep the Tenant’s security deposit, and to recover the filing fee from the Tenant.

An agent for the Landlord (the “Landlord”) appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. There was no appearance by the Tenant during the 30 minute duration of the hearing.

Preliminary Issues

As the Tenant failed to appear for the hearing, I turned my mind to the service of documents by the Landlord for this hearing. The Landlord testified that she served a copy of the Application and the Notice of Hearing documents by registered mail on September 26, 2014. The Landlord provided the Canada Post tracking number into oral evidence which was noted on the file cover. The Landlord also provided a copy of the Canada Post tracking number relating to the service of her evidence, which had also been served to the Tenant by registered mail.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenant was deemed served with the required documents pursuant to the Act.

In the Landlord’s monetary breakdown detailed with the Application, the Landlord disclosed a claim for a late fee and an overholding charge against the Tenant. I find this was sufficient notice that was given to the Tenant for this portion of the claim. As a result, I amended the Landlord’s Application, pursuant to Section 64(3) (c) of the Act, to

include a claim for compensation for damage or loss under the Act, regulation or tenancy agreement.

During the hearing, the Landlord referred to documentary evidence which was not before me in the Landlord's file. This included the tenancy agreement, the Condition Inspection Report (the "CIR"), and rent receipts. The Landlord testified that this evidence had been served to the Tenant and the Tenant received copies of these documents during the tenancy. As a result, I allowed the Landlord to provide me a copy of these documents after the hearing had concluded pursuant to Rule 3.17 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

- Is the Landlord entitled to a late rent fee for June 2014 and an overholding charge as set out in the tenancy agreement?
- Is the Landlord entitled to costs associated with damage to the rental unit?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on September 21, 2013 for a fixed term of one year. The tenancy ended when the Tenant sent the Landlord an email on May 27, 2014 confirming that he wanted to end the tenancy on the effective end date of the fixed term, being August 31, 2014. Rent under the written tenancy agreement was \$800.00 payable on the first day of each month.

The Tenant paid the Landlord a security deposit in the amount of \$400.00 on September 20, 2013 which the Landlord still retains. The Landlord testified that she completed a move-in and move-out CIR. However, when I examined the documents the Landlord provided after the hearing, there was no move-out CIR provided and the move-in CIR was completed but not signed by the Tenant.

The Landlord testified that she attended the rental unit on August 31, 2014 at 1:00 p.m., which was the required time for the Tenant to fully vacate the rental unit. However, the Tenant had not cleaned the unit, still had personal property in the unit, and had not repaired multiple damages. The Landlord testified that she informed the Tenant that she had new renters moving in the next day and that he was to complete his obligations under the Act before they arrived.

The Landlord testified that she attended the rental unit on September 1, 2014 with a cleaning and repair company as she had a feeling that the Tenant may abandon the rental unit without completing the cleaning and repairs. However, when she arrived, the Tenant called the police. The Landlord testified that the police facilitated the move out of the Tenant and they all chipped in to help the Tenant to move out his belongings because the Landlord's new renters were waiting outside to move in with their belongings. The Landlord testified that the Tenant orally provided her with a forwarding address which the Landlord noted and used to make the Application.

The Landlord testified that the Tenant failed to clean the rental suite and there were multiple damages to the rental unit. The Landlord referred to photographic evidence which indicated that the Tenant had left junk inside the rental unit which the Landlord had to dispose of. The Landlord pointed to an invoice titled "MOVE OUT REPAIRS" which listed the repairs that were conducted by the repair company. This included: replacing light bulbs; caulking the bathroom sink, shower base and flooring; repairing split wood in doors; and, re-installing the kitchen hood fan. The Landlord testified that the repair man completed other repairs which were not related to the Tenant and these were not being charged to the Tenant. The amount documented on the invoice is \$502.80 and the Landlord seeks to recover from the Tenant \$357.00.

The Landlord also provided a receipt from a professional cleaning company for the cost of cleaning the rental unit in the amount of \$162.48; this included the cleaning of the stove ring burners. The Landlord pointed to her photographic evidence to support her testimony that the Tenant had failed to clean the rental unit.

The Landlord testified that the Tenant also failed to clean the carpets at the end of the tenancy. The Landlord referred to an invoice she had submitted from a carpet cleaning company which showed carpet cleaning in the amount of \$82.95.

The Landlord explained that the tenancy agreement requires the Tenant to pay a late rent fee of \$25.00 which appears at section (e) of the additional terms. The Landlord testified that the Tenant paid his rent late for June 2014. The Landlord provided a copy of the cash receipt for the Tenant's rent in the amount of \$800.00 which was paid on June 4, 2014.

The Landlord pointed to the same tenancy agreement at section (i) of the additional terms which states, "If the tenant remains in possession, contrary to this agreement or unlawfully, then the landlord may claim from the tenant overholding compensation of \$100.00 per day plus pro rata rent." As a result, the Landlord now seeks to recover

\$100.00 from the Tenant because the Tenant failed to move out on August 31, 2015 and overheld the tenancy for one day.

Analysis

In relation to the timing of the Landlord's Application for the Tenant's security deposit, I accept the Landlord's oral evidence that the Tenant provided the Landlord with a forwarding address on September 1, 2014. As a result, I find the Landlord made the Application to keep the Tenant's security deposit within the 15 day time limit stipulated by Section 38(1) of the Act.

Section 7(1) (d) of the Residential Tenancy Regulation allows a Landlord to charge up to \$25.00 for late payment of rent as long as the written tenancy agreement provides for this. The Landlord provided sufficient evidence to show that the Tenant had failed to pay rent on time for June 2014 and the tenancy agreement allows the Landlord to charge for late payment of rent. Therefore, I allow the Landlord's claim for **\$24.99** for late rent.

In relation to the Landlord's claim for \$100.00 for overholding the tenancy as required by the written tenancy agreement, the Residential Tenancy Regulation does not allow for a pre-determined amount to be charged based on the tenant overholding a tenancy. Furthermore, Section 57 of the Act provides a landlord with remedy in the form of compensation from an overholding tenant. In this case, I find the Landlord did not disclose or prove any additional monetary loss she suffered as a result of the Tenant overholding the tenancy, such as lost rent. Therefore, based on the foregoing, I dismiss the Landlord's claim for \$100.00 in this respect and consider the losses the Landlord did disclose as follows.

In relation to the Landlord's CIR as evidence in this hearing, I have placed little evidentiary weight on this document because the Tenant failed to sign the move-in CIR and no move out CIR was submitted into written evidence. As a result, I turned my mind to the remainder of the undisputed evidence to make findings in relation to the Landlord's claim for damages.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end the tenancy. In addition, Policy Guideline 1 to the Act on the responsibilities of a tenant and landlord explains that generally the tenant is responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Based on the foregoing, I am satisfied that the Landlord's evidence suggests that the Tenant failed to clean the rental suite and leave it undamaged as required by the Act.

The Landlord's photographs along with the Landlord's undisputed oral testimony are sufficient evidence on the balance of probabilities that the Tenant breached the Act in this respect. The invoices provided by the Landlord are also sufficient to verify the losses being claimed. Therefore, I allow the Landlord's claim for cleaning and repair costs in the amount of **\$519.48** (\$162.48 + \$357.00).

In relation to the carpet cleaning, I accept the Landlord's undisputed evidence that the Tenant failed to clean the carpets at the end of the tenancy as evidenced by the invoice for this cleaning cost. I also accept that the tenancy lasted for at least one year which required the Tenant to clean the carpets at the end of the tenancy. Therefore, I allow the Landlord's claim for carpet cleaning in the amount of **\$82.95**

As the Landlord has been successful in the majority of her claim, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application. Therefore, the total amount awarded to the Landlord is **\$677.42**.

As the Landlord already holds \$400.00 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is granted a Monetary Order for the remaining amount of **\$277.42** (\$677.42 - \$400.00). This Order must be served on the Tenant and may then be filed in the Small Claims Court and enforced as an order of that court. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has breached the Act by failing to clean the rental suite and leave it undamaged at the end of the tenancy. Therefore, the Landlord is allowed to keep the Tenant's security deposit and is issued with a Monetary Order for the remaining amount of **\$277.42**.

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: May 1, 2015

Residential Tenancy Branch

