



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords under the *Residential Tenancy Act* (the “Act”) for a monetary order for damage to the unit, site or property, for authority to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee.

Landlord S.P. (hereinafter referred to as the “landlord”) appeared at the teleconference hearing and gave affirmed testimony. The landlord stated that she was representing both landlords at the hearing. During the hearing the landlord was given the opportunity to provide her evidence orally and ask questions about the hearing process. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenants by registered mail on November 19, 2014. The landlord also provided two registered mail tracking numbers in evidence, one for each tenant. According to the Canada Post registered mail tracking website, the registered mail package addressed to tenant K.L. was successfully delivered on November 25, 2014, while the registered mail package addressed to tenant N.D. was returned to sender and signed for by the landlord on December 22, 2014.

Pursuant to section 90 of the Act, I find that tenant N.D. was deemed served on November 24, 2014 which is five days after the registered mail was placed into the mail. I find that tenant K.L. was served on November 25, 2014 which is the date the package was signed for. Given the above, I find the tenants were sufficiently served in

accordance with the *Act* with the Notice of Hearing, Application and documentary evidence.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlord testified that a fixed term tenancy began on December 1, 2013 and was scheduled to expire on December 1, 2014; however the tenants vacated the rental unit on October 31, 2014. Monthly rent in the amount of \$1,200 was due on the first day of each month. A security deposit of \$600 was paid by the tenants, which the landlords continue to hold.

The landlords have applied for a monetary claim in the amount of \$666.70 comprised of the following, which I note actually totals \$698.70:

Item 1. Interior cleaning	\$300
Item 2. Exterior cleaning	\$60
Item 3. Interior door replacement	\$140
Item 4. Closet door repair	\$60
Item 5. Cleaning supplies	\$20
Item 6. Custom blind	\$80
Item 7. Tenant not out of rental unit by 1pm	\$38.70
TOTAL	\$698.70

Regarding item #1, the landlord presented two receipts for cleaning the rental unit after the tenants failed to clean the rental unit before vacating the rental unit. The first receipt is for 7 hours of cleaning for a total of \$140, while the second receipt is for 8 hours of cleaning for a total of \$160.

The landlord stated they received a letter dated November 10, 2014 from the tenant offering \$200 towards cleaning costs, which the landlords did not agree to as the costs

exceeded that amount. The landlord stated that the letter also contained the tenants' written forwarding address. The landlords applied for dispute resolution claiming towards the tenants' security deposit on November 13, 2014.

Regarding item #2, the landlords did not submit a condition inspection report, had no before photos, and the photos submitted in evidence were unclear. The landlords have claimed \$60 for this portion of their claim.

Regarding item #3, the landlords did not submit a condition inspection report or receipts for this portion of their claim. The landlords have claimed \$140 for this portion of their claim.

Regarding item #4, the landlords did not submit a condition inspection report or receipts for this portion of their claim. The landlords have claimed \$60 for this portion of their claim.

Regarding item #5, the landlords did not submit a condition inspection report or receipts for this portion of their claim. The landlords have claimed \$20 for this portion of their claim.

Regarding item #6, the landlords did not submit a condition inspection report or receipts for this portion of their claim. The landlords have claimed \$80 for this portion of their claim.

Regarding item #7, the landlords are claiming \$38.70 which is the per diem daily amount of rent for 1 day as the landlord testified that the tenants failed to move out by 1p.m. on October 31, 2014 and did not leave until 8:30 p.m. on that date. The landlord testified that new tenants did move into the rental unit on November 1, 2014.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

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 landlords 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 tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

Item #1 – The landlords have claimed \$300 for cleaning the rental unit. Section 37 of the *Act* applies and states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[my emphasis added]

Based on the landlord's undisputed testimony and the receipts submitted in evidence, I find the landlords have met the burden of proof as I find the tenants failed to leave the

rental unit in reasonably clean condition as required by section 37(2)(a) of the *Act*. As a result, **I grant** the landlord **\$300** as claimed, for cleaning costs.

Item #2 – I dismiss this portion of the landlord’s claim due to insufficient evidence. The landlords did not submit a condition inspection report, had no before photos, and the photos submitted in evidence were unclear.

Item #3 – I dismiss this portion of the landlord’s claim due to insufficient evidence. The landlords did not submit a condition inspection report or receipts in support of this portion of their claim.

Item #4 – I dismiss this portion of the landlord’s claim due to insufficient evidence. The landlords did not submit a condition inspection report or receipts in support of this portion of their claim.

Item #5 – I dismiss this portion of the landlord’s claim due to insufficient evidence. The landlords did not submit a condition inspection report or receipts in support of this portion of their claim.

Item #6 – I dismiss this portion of the landlord’s claim due to insufficient evidence. The landlords did not submit any receipts in support of this portion of their claim.

Item #7 – I accept the undisputed testimony of the landlord that the tenants did not move out of the rental unit by 1p.m. on October 31, 2014, having moved out at 8:30 p.m. on October 31, 2014. As the tenants breached section 37(1) of the *Act*, **I grant** the landlord a nominal amount of **\$1** to acknowledge the breach of the *Act* by the tenants.

As the landlords’ application had merit, **I grant** the landlords the recovery of the filing fee in the amount of **\$50**. The landlords continue to hold the tenants’ security deposit of \$600 which has accrued \$0.00 in interest to date.

Monetary Order – **I find** that the landlords have established a total monetary claim in the amount of **\$351** comprised of \$300 for cleaning costs, \$1 as a nominal amount for the tenants breaching the *Act*, plus \$50 for the recovery of the cost of the filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants’ security deposit. **I ORDER** the landlords to retain **\$351** of the tenants’ \$600 security deposit in full satisfaction of the landlord’s monetary claim, leaving a security deposit balance owing to the tenants in the amount of \$249.

I ORDER the landlord to immediately return the tenants' **\$249** security deposit balance to the tenants. **I grant** the tenants a monetary order under section 67 for the security deposit balance due to the tenants in the amount of **\$249**.

Conclusion

The landlords have established a total monetary claim in the amount of \$351. The landlords have been ordered to retain \$351 of the tenants' \$600 security deposit in full satisfaction of the landlords' monetary claim.

The landlord has been ordered to immediately return the tenants' remaining **\$249** security deposit balance to the tenants. The tenants have been granted a monetary order under section 67 for the security deposit balance due to the tenants in the amount of **\$249**. Should the tenants require enforcement of the monetary order, the monetary order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: July 20, 2015

Residential Tenancy Branch

