



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, for an order to retain the security deposit in partial 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 they served the Tenant by registered mail, sent on December 5, 2014. The Landlord testified that the Tenant left the rental unit early on or about October 31, 2014, just a day or two following receipt of a one month Notice to End Tenancy for cause.

The Landlord initially thought the Tenant did not provide a forwarding address as the Tenant had told the Landlord previously that she could keep the security deposit due to damage in the rental unit caused by the Tenant's boyfriend; however, during the cleaning of the rental unit on November 27, 2014, the Landlord found the forwarding address of the Tenant which had apparently slipped between the stove and the counter. The Landlord also received a phone call from a friend of the Tenant requesting return of the security deposit. The Landlord received the registered mail back. Under the Act the Tenant is deemed served five days after mailing, even if they refuse or neglect to accept the registered mail. Therefore, 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 in July of 2014, with the parties entering into a written tenancy agreement. The rent was \$750.00 per month and the Tenant paid a security deposit of \$375.00.

On or about September 8, 2014, the Tenant signed an agreement with the Landlord that the Landlord could deduct an amount from the security deposit to pay for damages caused to the rental unit. The amount the Landlord could deduct was not filled in and left blank. The Tenant agreed to the deduction for damages that occurred between July 15 and September 8, 2014. The Landlord testified that the Tenant's boyfriend had punched a hole in the wall. In evidence supplied by the Landlord there are two photographs of holes in the drywall, both approximately the size of a fist.

On September 22, 2014, the Landlord received a letter from the local municipal authority informing the Landlord that the rental unit had to be vacated as it was an illegal suite. On September 29, 2014, the Landlord issued a one month Notice to End Tenancy due to this letter, with an effective date of November 1, 2014.

According to the Landlord's testimony the Tenant vacated the property about October 31, 2014, due to this Notice.

The Landlord is now claiming for the costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

The Landlord claims for **\$150.00** to repair two holes in the drywall. In evidence to support this claim is a copy of an invoice from the Landlord and photographs of the holes.

The Landlord claims **\$370.00** for cleaning the rental unit. In evidence the Landlord supplied an estimate from the cleaner used for cleaning the rental unit in the amount of \$420.00. This amount was reduced to \$370.00, as the Landlord supplied the cleaning products to the cleaners. The cleaning was significant three bins of garbage that was removed to the landfill and recycling depot, cleaning and disinfecting the kitchen cupboards, stove, fridge and drawers, and degreasing the walls and ceiling. The laundry room and bathroom needed extensive cleaning. In evidence the Landlord

supplied a picture of a toilet that appeared not to have been cleaned for a while and was left with what appears to be unflushed human waste in it. The bedrooms, living room and hallways also needed cleaning. In evidence are an invoice/estimate and photographs of the rental unit showing areas that needed cleaning and there are also images of refuse left around the rental unit property.

Lastly, the Landlord claims the \$50.00 filing fee for the cost of 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, or make necessary repairs, and this has caused losses to the Landlord.

Section 37 of the *Act* required the Tenant to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

I find that the Tenant breached section 37 of the Act. I find the Tenant agreed with the Landlord in the written agreement of September 8, 2014, that damages had occurred to the rental unit during the tenancy. In effect, the Tenant acknowledges responsibility for the damages. Therefore, I find the Landlord has shown the Tenant breached the Act by leaving the rental unit damaged with two holes in the drywall. I find the Landlord has proven the cost of these repairs as being **\$150.00**.

I also find the Tenant breached section 37 by failing to clean the rental unit in a reasonable manner and remove debris from the property. The evidence of the Landlord in the form of testimony, photographs and an invoice/estimate support the Landlord's claims. I find the Landlord has proven the claim of **\$370.00**.

I also find the Landlord acted reasonably in mitigating her losses. She supplied cleaning products and this reduced the claim against the Tenant.

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.]

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 has established a total monetary claim of **\$570.00** 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 **\$375.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$195**.

This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant breached the Act by failing to make repairs to the rental unit and by failing to clean it to a reasonable state.

The Landlord is granted a monetary order, may keep the security deposit in partial satisfaction of the order, and is granted an order against the Tenant for the balance due of \$195.00.

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

