



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 was convened as a result of the Landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary Order for unpaid rent or utilities, for authorization 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 filing fee.

The Landlord attended the teleconference hearing. During the hearing the Landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the Tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The Landlord testified that the Notice of Hearing was served on the Tenant on November 20, 2014 by registered mail to the address provided by the Tenant as her forwarding address. Section 90 of the Act provides that documents served in this way are deemed served 5 days later, namely November 25, 2014. I accept the Landlord's undisputed testimony that he served the Tenant by registered mail and that she was sufficiently served as of that date under the *Act* as a result.

Issues to be Decided

- Is the Landlord entitled to a monetary Order under the *Act*, and if so, in what amount?
- What should happen to the Tenant's security deposit under the *Act*?

Background and Evidence

A one year fixed term tenancy agreement between the parties began on or about March 28, 2014. A copy of the written tenancy agreement was introduced in evidence and which indicated that monthly rent in the amount \$850.00 was due on the first day of each month during the tenancy. The Landlord testified that the Tenant paid a \$425.00 security deposit and a \$142.00 pet damage deposit for a total deposit of \$567.00 (the "Deposit") at the start of the tenancy which the Landlord continues to hold.

Pursuant to the Tenancy Agreement, the Tenant agreed to pay liquidated damages in the amount of \$425.00 if she ended the fixed term tenancy before the end of the term.

The Landlord testified that the Tenant moved from the rental unit on October 31, 2014. Introduced in evidence were copies of the move in and move out Condition Inspection Reports.

The Landlord applied for dispute resolution on November 20, 2014.

Introduced in evidence was a copy of the Move Out Condition Inspection Report which confirmed that the rental unit was left unclean and damaged.

The Landlord filed in evidence a Monetary Orders Work sheet which confirmed he is seeking a monetary Order in the amount of \$\$891.31 comprised of the following:

| Item Description | Amount |
|--|-----------------|
| Liquidated damages | \$425.00 |
| Carpet cleaning | \$210.94 |
| Light bulb replacement | \$16.08 |
| Oven cleaner | \$5.29 |
| New deadbolt and keys | \$14.00 |
| Labour to clean oven | \$40.00 |
| Labour to clean blinds | \$60.00 |
| General cleaning and replacement of deadbolt | \$20.00 |
| Estimated cost of replacement of living room baseboard | \$50.00 |
| Filing fee | \$50.00 |
| TOTAL MONETARY CLAIM | \$891.31 |

The Landlord provided undisputed testimony confirming the amounts described in the table above and provided receipts which supported the amounts claimed.

Analysis

Based on the documentary evidence, undisputed testimony of the Landlord, and on the balance of probabilities, I find the following.

The Tenant agreed to pay liquidated damages in the amount of \$425.00 when she signed the Tenancy Agreement. As she ended the tenancy prior to the fixed term, the Landlord is entitled to recovery of this amount.

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy.

The Condition Inspection Report confirms that the rental unit required cleaning and repairs due to the condition it was left in by the Tenant. The Tenant failed to honour her obligations pursuant to the Tenancy Agreement, the *Act* and the Policy Guidelines when she left the rental unit in such a condition. The Landlord submitted sufficient evidence to support the amounts claimed for cleaning and repair of the rental unit and accordingly I award him compensation for the amounts claimed, namely:

| Item Description | Amount |
|--|-----------------|
| Liquidated damages | \$425.00 |
| Carpet cleaning | \$210.94 |
| Light bulb replacement | \$16.08 |
| Oven cleaner | \$5.29 |
| New deadbolt and keys | \$14.00 |
| Labour to clean oven | \$40.00 |
| Labour to clean blinds | \$60.00 |
| General cleaning and replacement of deadbolt | \$20.00 |
| Estimated cost of replacement of living room baseboard | \$50.00 |
| Filing fee | \$50.00 |
| TOTAL AWARDED | \$891.31 |

As noted in the above table, and since the Landlord's application had merit, I grant the Landlord the recovery of the **\$50.00** filing fee.

I find that the Landlord has established a total monetary claim of \$891.31 and I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's deposit, which the Landlord continues to hold, in the amount of \$567.00, which has accrued \$0.00 in interest to date. I authorize the Landlord to retain the Tenant's full security deposit of \$240.00 in partial satisfaction of the Landlord's monetary claim, and I grant the Landlord a monetary Order pursuant to section 67 of the *Act* for the balance owing by the Tenant to the Landlord in the amount of **\$324.31**. 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

I find that the Landlord has established a total monetary claim of \$891.31 as indicated above. I authorize the Landlord to retain the Tenant's full deposits in the amount of \$567.00 in partial satisfaction of the claim, and I grant the Landlord a monetary Order under section 67 for the balance due of \$324.31. 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.

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 09, 2015

Residential Tenancy Branch

