



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on February 12, 2015 seeking to keep all or part of the security deposit.

The hearing was conducted via teleconference and was attended by two Landlords who each provided affirmed testimony. The application listed only one applicant Landlord; therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

The Landlords submitted that the Tenant was served notice of this application and this hearing by registered mail to the P.O. Box service address provided by the Tenant. The registered mail was sent on February 16, 2015 and Canada Post receipts were submitted in the Landlord's evidence.

Section 90 of the *Act* provides that a document given or served in accordance with section 89 of the *Act*, if given or served by mail, is deemed to be received on the 5th day after it is mailed.

Based on the above, I conclude the Tenant was deemed served notice of this proceeding and the Landlord's application as of February 21, 2015, five days after they were mailed, pursuant to section 90 of the *Act*.

Issue(s) to be Decided

Has the Landlord proven entitlement to retain the security deposit?

Background and Evidence

The Landlords testified that the Tenant entered into a written month to month tenancy which began on February 1, 2014. Rent of \$750.00 was due on or before the first of each month and in January 2014 the Tenant paid \$375.00 as the security deposit.

The Landlords submitted documentary evidence in support of their application which included, among other things, copies of: their written submission; 45 photographs; a January 09, 2015 RTB Decision; the condition inspection report form; receipts for cleaning supplies purchased totaling \$143.63; a quote to paint the unit to remove the smoke smell of \$2300 - \$2800; and an audio recording of the Tenant telling the Landlords to keep his security deposit.

The Landlords submitted that the Tenant vacated the rental unit on January 31, 2015; however, he did not take part in the move out inspection as previously agreed to in the settlement agreement which was recorded in the January 9, 2015 Decision.

The Landlords asserted that the rental unit was left damaged and unclean at the end of the tenancy, as supported by the photographs and the move out condition report. The Landlords argued that their expenses and labor costs to clean, repair, and repaint the rental unit far exceeded the Tenant's \$375.00 security deposit. That being said, they were not seeking compensation above the security deposit as they do not wish to have any further contact with the Tenant.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(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.

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.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

I accept the undisputed evidence that the Tenant left the rental unit unclean and damaged at the end of the tenancy, in breach of sections 32 and 37 of the *Act*. Accordingly, I grant the Landlord's application in its entirety and I award them monetary compensation in the amount of **\$375.00**, which is to be offset against the Tenant's \$375.00 security deposit plus \$0.00 interest, pursuant to sections 67 and 72 of the *Act*.

Conclusion

The Landlord has succeeded with their application and was awarded monetary compensation of \$375.00 which was offset against the Tenant's security deposit of \$375.00. Accordingly, the Landlords are entitled to retain the Tenant's full security deposit.

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: August 24, 2015

Residential Tenancy Branch

