



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony, provided evidentiary material in advance of the hearing, and called one witness who gave independent affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution, evidentiary material and notice of this hearing by registered mail on April 1, 2015, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the landlord. The landlord testified that the tenant was served on that date and in that manner and has provided a copy of the Registered Domestic Customer Receipt and envelope marked with that date by Canada Post, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony of the landlord is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2014 but is not sure when it ended. Rent in the amount of \$700.00 or \$750.00 per month was payable on the 1st day of each month. The landlord collected a security deposit from the tenant, which he believes was in the amount of \$400.00.

The landlord further testified that a previous hearing between the parties resulted in a Decision and a monetary order dated December 11, 2014. The monetary order was for unpaid rent, and the landlord believes that the security deposit was dealt with in that Decision. This claim is for damage to the rental unit and the landlord has provided 3 Monetary Order Worksheets which total, \$887.34; \$368.76; and \$32.03.

No move-in condition inspection report was completed at the beginning of the tenancy, however the landlord conducted a move-out condition inspection report in the absence of the tenant on approximately December 18, 2014 after giving the tenant at least 2 opportunities to participate. The first opportunity was suggested in a note to the tenant, suggesting December 16, 2014 at 5:00 p.m. or 8:00 p.m., or December 17, 2014 at 12:30 p.m. or 6:00 p.m. The landlord believes the note was posted to the tenant's door on December 16, 2014. A final opportunity was given in the approved form which was served to the tenant by posting it to the door of the rental unit. That document scheduled the inspection for December 18, 2014 at 9:30 a.m. Copies of both notices have been provided. The tenant didn't show up on any occasion suggested, however the landlord does not recall when the documents were posted. A copy of the move-out condition inspection report has also been provided, and it contains a forwarding address of the tenant. The landlord testified that the previous hearing included an application by the tenant, and the landlord was served with the Application which contained that forwarding address.

The landlord further testified that the rental unit was clean and newly painted at the beginning of the tenancy and has provided a copy of a note signed by the landlord and the landlord's witness stating that the previous tenant left the rental unit very clean and repairs and painting were completed before this tenancy began.

The landlord claims costs of \$28.22 for processing photographs for this hearing; \$11.34 for registered mail; \$2.42 for photocopies; and \$0.30 for an envelope purchased for service upon the tenant.

The landlord also claims the cost of repair for damages caused by the tenant and not corrected before the tenancy ended, as follows:

- \$65.50 garbage disposal, and receipts have been provided;
- \$27.03 for a new window screen; it looked like the tenant tried to take it out, but bent it and a receipt has been provided;
- \$120.00 for suite cleaning, and a receipt is provided;
- \$555.00 for paint and repairs and a receipt is provided;
- \$60.00 for gas for the landlord's maintenance person, and use of his truck and time and a receipt has been provided;

- \$31.59 for cleaning supplies; the landlord did not hire a cleaning company, but a friend and a good cleaner, and the landlord paid for the supplies; a receipt is provided;
- \$85.66 cleaning and repair supplies, and a receipt is provided;
- \$210.00 for the landlord's time cleaning the suite, who cleaned with the cleaner;
- \$9.00 for keys; the landlord gave the tenant 2 at the beginning of the tenancy but the tenant didn't leave any at the end of the tenancy, a receipt has been provided;
- \$2.74 for ceiling bulb and a receipt has been provided;
- \$17.40 for assorted supplies for repairs; bulbs came in packages, and the landlord only claims for the ones used in this rental unit.

The landlord also testified that the landlord's witness completed repairs prior to this tenancy and rental unit was left very clean by the previous tenant.

The landlord's witness testified that he works for the landlord doing maintenance on 4 rental properties and has been doing so for about 10 years.

The witness does not know when the tenant moved out of the rental unit, but believes that rent was \$750.00 per month. The witness does not know how much or when a security deposit was collected by the landlord.

The witness also testified that the landlord received the tenant's forwarding address in writing on a Tenant's Application for Dispute Resolution, which the witness read.

The witness served the tenant with the first and final opportunities to conduct the move-out condition inspection report but does not remember when. He was also present for the move-out condition inspection but doesn't remember the date, and stated that the landlord filled out the report.

The witness was working for the landlord before the tenant moved in, and testified that the suite was re-painted throughout and cleaned prior to this tenancy. After the tenant moved out it was a mess. There were holes in walls, and slop all over the walls, and cat urine everywhere. A cleaning lady was hired to clean it. Garbage left behind had to be hauled to the dump, the fridge and kitchen cupboards were left very unclean, and cat and dog hair was everywhere.

The witness gets paid by the hour and gave the landlord a receipt for the hours worked on the rental unit at \$15.00 per hour.

Analysis

I explained to the landlord the legal principle of *res judicata* which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decision to ensure that I did not make a finding on a matter that had already been heard and decided upon. I have reviewed that Decision, and I find that the applications of the parties in that case were different from this case, and dealt with the landlord's application for an Order of Possession and a monetary order for unpaid rent or utilities and for an order permitting the landlord to keep the security deposit, and the tenant had applied for an order cancelling a notice to end the tenancy given by the landlord. The security deposit was also dealt with in that Decision. This matter is with respect to damage to the unit, site or property, which was not part of the previous hearing.

Where a party makes a claim against another party for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

In this case, the landlord and the landlord's witness were unable to answer a number of questions with respect to this tenancy. However, I have reviewed the material, and considering the testimony of the landlord's witness and the move-out condition inspection report, I am satisfied that the landlord has satisfied the elements above with respect to the following:

- \$65.50 garbage disposal;
- \$27.03 for a new window screen;
- \$120.00 for suite cleaning;
- \$555.00 for paint and repair supplies;
- \$60.00 for gas for the landlord's maintenance person, and use of his truck and time;
- \$31.59 for cleaning supplies;
- \$85.66 cleaning and repair supplies;
- \$210.00 for the landlord's time cleaning the suite, who cleaned with the cleaner;
- \$9.00 for keys;
- \$2.74 for ceiling bulb; and
- \$17.40 for assorted supplies for repairs;

for a total of \$1,183.92.

The *Residential Tenancy Act* specifies recovery of a filing fee, however not for preparation for a hearing or service costs. Therefore, the landlord's claims for costs for processing photographs for this hearing; registered mail; photocopies; and for an envelope purchased for service upon the tenant are not recoverable under the *Act*, and those claims are hereby dismissed. Since the landlord has been partially successful with the application, however, the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,233.92.

This order is final and binding and may be enforced.

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: September 11, 2015

Residential Tenancy Branch

