



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave testimony. The tenants both confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. The tenants both stated that neither party submitted any documentary evidence. Based upon the testimony of both parties, I find that both parties have been deemed served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security and pet damage deposits?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, invoices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim are set out below.

This tenancy began on September 29, 2012 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$735.00 payable on the 1st day of each month and a security deposit of \$367.50 and a pet damage deposit of \$367.50 were paid on September 8, 2012. A completed condition inspection report for the move-in (September 29, 2012) and the move-out (May 7, 2015) were completed as shown by the submitted copies.

The landlord seeks a monetary claim of \$2,447.70 which consists of:

Rental Loss (overholding April 16 to May 7, 2015)	\$533.47
Rental Loss (damage requiring repairs May 8 to May 31, 2015)	\$569.03
Cleaning and Damage Repair Costs	\$1,345.20

The landlord provided written details that the tenant was served with a 10 Day Notice on April 2, 2015 for unpaid rent dated April 2, 2015. The 10 Day Notice was served by placing it in the mail box for the rental unit on April 2, 2015 as shown by the landlord's completed proof of service document. The tenant, J.P. confirmed in her direct testimony that she did not receive the notice until April 5, 2015 as it was in her mail box. The 10 Day Notice states that the tenant failed to pay rent of \$735.00 that was due on April 1, 2015. The landlord stated that the tenants did not vacate the rental unit until May 7, 2015 when he received the keys from the tenant, S.R.

The landlord also stated that at the end of the tenancy the rental unit was left dirty requiring extensive cleaning and repairs as per the completed condition inspection report for the move-out and the submitted photographs. The landlord relies "examples" of costs by submitting invoices of other work for carpet cleaning(July 25, 2014), replacing countertops (October 23, 2013), flooring (January 27, 2014), carpet (October 22, 2012). The landlord clarified that all work was done in-house and that costs were based upon the landlord's experience and previous work.

The tenants both dispute the claims of the landlord stating that the landlord refused to accept rent payment when it was offered late on the 15th of the month due to a verbal agreement with the landlord. The tenants both confirmed that rent for April and May were not paid. The tenants both stated that the tenancy ended when they moved out on May 1, 2015, but confirmed that the keys were returned to the landlord on May 7, 2015 because of their work schedules. However, the tenants did concede that damage was caused by the tenants for the window sill, the hole in the hallway and the torn drapery.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the

damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find that the landlord has provided sufficient evidence to satisfy me that rent was unpaid for April 2015 as per the landlord's confirmed service of the 10 Day Notice dated April 2, 2015 by placing it in the mailbox on April 2, 2015. This was confirmed by the tenant, J.P. who stated that it was found in her mail box on April 5, 2015. In any event the tenant is deemed to have received the 10 Day Notice when served in this manner 3 days later. The tenant, J.P. confirmed in her direct testimony that rent was not paid as she stated that the landlord refused payment on the 15th day of the month. On this basis, the landlord has established a claim for unpaid rent/loss of rental income of \$533.47.

On the landlord's claim for cleaning and damages, I find that I prefer the evidence of the landlord over that of the tenants. The landlord has provided a completed condition inspection report for the move-in and the move-out which were approved and signed for by the tenant, S.R. The landlord has provided photographs which document the cleaning and damage as reported in the condition inspection report for the move-out. However, the landlord relies on submitted invoices/receipts for unrelated work performed between 2012 and 2014 on other rental units. The landlord relies on these invoices as "examples" to estimate his costs for cleaning and repairs. The landlord has failed to provide any evidence for the actual cost of cleaning and repair of damages to the rental unit in this case. On this basis, I find that the landlord has failed to provide sufficient evidence to show entitlement to the amount claimed for cleaning and damages. This portion of the landlord's claim is dismissed.

As the landlord has failed to provide sufficient evidence to establish a claim for cleaning and damages, I find on a balance of probabilities that the landlord has failed to establish his claim for the loss of rental income for the time spent on the cleaning and damages claimed by the landlord. This portion of the landlord's monetary claim is dismissed.

The landlord has established a monetary claim of \$533.47.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The landlord testified that he continues to hold the tenant's security deposit of \$367.50 and pet damage deposit of \$367.50 plus interest from September 8, 2012, until the date of this decision. Over that period, no interest is payable on the landlord's retention of the security deposit. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's

security and pet damages deposits plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a Monetary Order for \$685.00 in the tenants' favour under the following terms:

Item	Amount
Loss of Rent (April 16-May 7)	\$533.47
Less Pet Damage Deposit	-367.50
Less Security Deposit	-367.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	-685.00

The tenant is provided with this Order in the above terms and the landlord must be served with this Order. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 30, 2015

Residential Tenancy Branch

