



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD

Introduction

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

- a monetary order for unpaid utilities and for damage to the unit pursuant to section 67; and
- 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.

The landlord attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that he served the tenant with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on June 18, 2015. The landlord clarified that it was sent via the tenant's agent as provided for in the tenant's notice to vacate letter dated May 17, 2015. The tenant provided the forwarding address in writing for delivery of the security deposit and appointing A.H. as his agent in the same letter.

Preliminary Issue

At the outset it was clarified with the landlord that the monetary claim would be limited to the filed \$750.00 claim, as opposed to the amount listed on a monetary worksheet imbedded within his documentary evidence with a noted total claim for \$2,416.62. The landlord confirmed that he did not file an amendment to his application. Although the landlord listed the additional damaged items of a damaged countertop, burn holes on deck and out of order dishwasher, the landlord did not note any monetary amounts for the claim in damages. The landlord stated that he still wished to proceed with the additional items listed in his monetary claim of 9 items, but understood that the claim would be limited to \$750.00. The hearing proceeded for the 9 items listed on the landlord's monetary worksheet with a maximum possible award of \$750.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid utilities and damage to the rental unit?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

This tenancy began on November 21, 2014 on a fixed term tenancy ending on May 31, 2015 as shown by the submitted copy of the signed tenancy agreement dated October 19, 2014. The monthly rent was \$1,500.00 payable on the 1st day of each month and a security deposit of \$750.00 was paid on November 12, 2014. A condition inspection report for the move-in was completed on November 21, 2014. No condition inspection report for the move-out was made by the landlord.

The landlord stated that the tenancy ended on May 29, 2015 and that the tenant was responsible for paying 50% of the utilities.

The landlord provided written submissions that the tenant gave short written notice (14 days) on May 17, 2015 to end the tenancy on May 31, 2015. The landlord stated that he immediately began advertising the unit for rent on May 18, 2015. The landlord stated that on May 28, 2015 a move-out inspection was conducted and that the keys to the rental unit were returned on May 29, 2015.

The landlord seeks a monetary claim of \$750.00 which consists of:

Unpaid municipal utilities (Feb-May-water,sewage&garbage) (50% of \$361.84 Invoice)	\$180.92
Unpaid Hydro (Apr & May) (50% of \$279.90 Invoice)	\$139.95
Professional Carpet Cleaning (stains)	\$182.65
Dishwasher Replaced	\$393.10
Compensation-Carpet Stains in living room	\$600.00
Compensation-Kitchen Countertop Damaged	\$600.00
Compensation-Carpet Stains in hallway	\$100.00
Compensation-burn holes on deck	\$100.00
Compensation-Cleaning(6 hours@\$20hr.)	\$120.00
Total	\$2,416.62

The landlord relies upon:

Municipal Utility Bill dated June 9, 2015	\$361.84
Hydro Invoice dated May 28, 2015	\$279.90
Carpet Cleaning Invoice dated June 1, 2015	\$182.65
Receipt for a Dishwater	\$393.10

The landlord stated that he seeks compensation for the depreciation of the above listed items as they were damaged by the tenant. The landlord provided direct testimony that the claims for compensation were arbitrary amounts not based upon any payments. The landlord stated that a new tenant now occupies the rental unit and that none of the items listed for compensation have been repaired or replaced as they were "kept as is".

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.

I accept the undisputed evidence of the landlord and find on a balance of probabilities that the landlord has established an entitlement for:

Municipal Utility Bill dated June 9, 2015	\$361.84
Hydro Invoice dated May 28, 2015	\$279.90
Carpet Cleaning Invoice dated June 1, 2015	\$182.65
Receipt for a Dishwater	\$393.10
Total	\$1,217.49

The landlord's undisputed affirmed testimony is supported by the limited photographs and the submitted copies of the paid invoices.

I find that the landlord has failed to establish a claim for compensation as listed:

Compensation-Carpet Stains in living room	\$600.00
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Compensation-Kitchen Countertop Damaged	\$600.00
Compensation-Carpet Stains in hallway	\$100.00
Compensation-burn holes on deck	\$100.00
Compensation-Cleaning (6 hours@\$20hr.)	\$120.00

The landlord provided direct testimony that these arbitrary amounts were not based upon any estimates, payments for repair or replacement of the items. The landlord also stated that the items were “kept as is” for the new tenants who currently occupy the rental premises. On this basis, I find that these items for claim by the landlord are dismissed. However, the landlord has provided sufficient evidence based upon the photographs submitted that the tenant left the rental unit dirty and damaged. On this basis, I grant a nominal award of \$220.00.

The landlord has established total monetary claim of \$1,437.49, but the landlord’s monetary claim is limited to the \$750.00 amount filed. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant’s \$750.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

The landlord has established a total monetary claim of \$750.00 and the landlord is granted authorization to retain the \$750.00 security deposit in offsetting this claim.

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: November 20, 2015

Residential Tenancy Branch

