



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNSD, MNDC, FF, SS

Introduction

On October 14, 2015 an ex parte hearing was conducted to hear the Landlord's request to serve documents for this hearing by e-mail to the Tenant. The Arbitrator who had conduct of the Landlord's substituted service application granted the Landlord's request. The file number for that hearing appears on the front page of this decision.

Then, on September 24, 2015 the Landlord applied for an Order of Possession for cause and a Monetary Order for the following: damage to the rental unit; unpaid rent; to keep the Tenant's security deposit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee. The Landlord also applied to serve the Tenant with documents other than that prescribed by the Act.

The Landlord appeared for this hearing and provided affirmed testimony and documentary evidence. However, there was no appearance by the Tenant during the 30 minute duration of the hearing. The Landlord provided affirmed testimony and documentary evidence to show that the documents for this hearing, which included her evidence and a copy of the Application, were served to the Tenant using the email address that was allowed by the previous Arbitrator.

The Landlord testified she had not had the e-mails returned back to her. Therefore, in the absence of the Tenant or any submission of evidence by the Tenant prior to this hearing, I find the Landlord met the service requirements of Section 71(1) of the Act.

At the start of the hearing, I confirmed with the Landlord that her request on the Application for documents to be served by substituted service had already been dealt with in the previous hearing. The Landlord also confirmed that the tenancy with the Tenant had ended on October 31, 2015 through a notice to end tenancy for cause. Therefore, the Landlord no longer required an Order of Possession. As a result, the Landlord withdrew these two portions of the Application.

In relation to the Landlord's monetary claim, the Landlord explained that she was still waiting to hear from the strata council regarding violations by the Tenant during the tenancy. The Landlord confirmed that she had not yet incurred the fines she was claiming in the Application as they are anticipated at this stage.

The Landlord also explained that she had not incurred any rental loss at the time of this hearing as she had managed to sign a new tenancy agreement with another renter (the renter who the Tenant was illegally subletting for which the Landlord ended the tenancy). The Landlord explained that her rental loss and advertising costs detailed on the Monetary Order Worksheet were anticipated losses. Therefore, as these costs had not been determined at the time of this hearing and were only anticipated, the Landlord withdrew these portions of her monetary claim.

The Landlord also claimed \$12.06 for an outstanding security deposit not paid by the Tenant during the tenancy. The Landlord was informed that this issue should have been dealt with during the tenancy and an unpaid security deposit cannot be ordered to be paid at the end of the tenancy. The Landlord was informed that in the alternative, the amount of security deposit she already held would be offset with any monetary amount awarded as detailed below. Therefore, in this hearing, I only dealt with the Landlord's monetary claim for damage to the rental unit.

Issue(s) to be Decided:

- Is the Landlord entitled to costs associated with damage, cleaning and carpet cleaning of the rental suite?
- Is the Landlord entitled to keep all of the Tenant's security deposit in partial satisfaction of the monetary claim?

Background and Evidence

The Landlord testified that this tenancy started in July 2012 for a number of fixed terms. The latest fixed term tenancy started on August 1, 2015 for a fixed term of two years due to end on August 1, 2017. Rent started off at \$930.00 and was increased to \$989.47 payable on the first day of each month. The Landlord testified that she held a security deposit from the Tenant in the amount of \$482.67.

The Landlord testified that she completed a move in Condition Inspection report (the "CIR") with the Tenant on August 17, 2012. The Landlord testified that because the move in CIR was being completed after the tenancy had started, the Landlord noticed

wine stains on the carpet in the hallway and living room. The Tenant admitted that this was wine stains and it was noted on the move in CIR that the Tenant would clean them at the end of the tenancy. The Landlord testified that at the start of the tenancy she provided the Tenant with a fob key to enter the residential building and a mail box key. This was reflected on the move in CIR.

The Landlord testified that she informed the Tenant that a move out condition inspection was going to be taking place on October 27, 2015 by email. Despite the Tenant being provided with a Notice of Final Opportunity to conduct the move out condition inspection, the Tenant failed to appear. Therefore the move out CIR was completed in the absence of the Tenant.

The Landlord noted on the move out CIR that the Tenant had failed to return the key fob to the building entrance as well as the mail box key. The Landlord provided email evidence in which she requests from the Tenant the return of these keys. As a result, the Landlord testified that she had to get the mail box key replaced at a cost of \$112.00. The Landlord provided an estimate invoice for this cost which included a service call out charge. The Landlord provided a copy of a cheque in the amount of \$150.00 which she had to pay to get a replacement key fob for the garage and building. The Landlord now seeks to recover these costs from the Tenant.

The Landlord testified that the Tenant failed to leave the rental suite clean at the end of the tenancy as well as failing to remove the stains from the carpet that were documented on the move in CIR. The Landlord explained that the signed written tenancy agreement required the Tenants to have the carpets cleaned at the end of the tenancy. As a result, the Landlord claims \$110.88 to have the carpets professionally cleaned and \$90.72 for cleaning of the rental unit. The Landlord provided quotes for these costs; in relation to the cleaning of the rental unit the Landlord charged the Tenant for three hours of cleaning at \$27.00 per hour, including taxes.

Analysis

Section 37(2) (a) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary. The Landlord's undisputed oral evidence and the CIR satisfy me that the Tenant failed to clean the rental unit and the carpets at the end of the tenancy. The Tenant failed to provide a preponderance of evidence to suggest otherwise. Therefore, I

award the Landlord the carpet and rental unit cleaning costs in the amount claimed of **\$201.60**, as verified by the estimates provided.

Section 37(2) (b) of the Act requires a tenant to provide the landlord with all keys to the rental unit. In respect to the costs claimed by the Landlord for changing the mail box and building key fob, I accept the Landlord's undisputed testimony and evidence to verify these costs, which the Tenant failed to return as required by the Act. As a result, the Landlord is awarded **\$262.00** for the replacement mail lock and key fob.

As the Landlord has been successful in this claim, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application. Therefore, the total amount awarded to the Landlord is **\$513.60**.

As the Landlord already holds \$482.67 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance in the amount of **\$30.93**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment.

Conclusion

The Tenant failed to clean the rental unit and return the keys. The Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the outstanding balance of the monetary claim for damages to the rental in the amount of \$30.93. The Landlord withdrew the remainder of her monetary claim and is at liberty to re-apply.

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 23, 2015

Residential Tenancy Branch

