



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPC, MND, MNDC, MNSD, FF

Introduction

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

- an order of possession for breach of an agreement with the landlord and for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- 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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The tenant, S.D. (the tenant) confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. The tenant confirmed that no documentary evidence was filed by the tenant for the hearing.

The hearing commenced, but was adjourned due to a lack of time. Both parties were notified that a new notice of an adjourned hearing letter would be sent to the confirmed addresses of both parties. Both parties were also cautioned that no new evidence would be allowed as the hearing has commenced.

During the hearing it was clarified with both parties that the landlord's claims would be limited to the amount filed on the application of \$4,165.00 as opposed to the landlord's monetary total as listed on the excel spreadsheet provided within the body of the landlord's documentary evidence. The landlord failed to properly amend the application

to increase the monetary claim as per the Rules of Procedure, Rule #4, amending an Application.

On December 15, 2015 the hearing was reconvened with both parties attending by conference call.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss, to retain all or part of the security deposit and recovery of his filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of both parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and the tenant's responses for my findings around it are set out below.

This tenancy began on April 1, 2013 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated March 19, 2013. Both parties confirmed that the landlord had possession of the rental unit on April 1, 2015. The monthly rent was \$900.00 payable on the 1st day of each month and a security deposit of \$450.00 was paid on March 18, 2013.

The landlord seeks a monetary claim for \$4,165.00 which consists of:

| | |
|----------|--------------------------------|
| \$50.30 | Deadbolt |
| \$153.97 | Cleaning Supplies |
| \$12.00 | Transfer station (Dump Charge) |
| \$224.03 | Paint |
| \$6.31 | Microwave Bulbs |
| \$8.90 | Gyproc |
| \$10.07 | Vapour Barrier Tape |
| \$8.83 | Drywall Screws |
| \$22.40 | Bathroom Sink Replacement |
| \$22.58 | Silicone Sealant/Hoses X2 |

| | |
|------------|--------------------------------------|
| \$168.00 | Replaced Doors/Frame |
| \$68.70 | Paint |
| \$76.79 | Painting/Sanding Supplies |
| \$9.50 | Registered Letter |
| \$510.00 | Labour (2 people) |
| \$59.06 | Smoke Detector |
| \$1,236.66 | Carpets |
| \$49.05 | Paint |
| \$162.58 | Replacement Bulbs and Knobs |
| \$17.69 | Asst. Bathroom Supplies |
| \$95.20 | New Faucets |
| \$8.99 | Screws for knobs |
| \$325.46 | Dishwasher |
| \$21.65 | Dishwasher |
| \$56.50 | Bedroom Door/Dishwasher Parts |
| \$4.11 | Dishwasher Hose-Flex |
| \$75.79 | Dishwasher Hose-replacement |
| \$18.48 | Dishwasher-Tool Rental |
| \$17.09 | Bedroom Door Striker |
| \$510.00 | Labour (2 people) |
| \$101.59 | Drain Tool-For Removal-Seized |
| \$52.63 | New Drain Assembly |
| \$4,165.00 | Sub Total |
| | |
| \$17.00 | Transfer Station (Dump Charge) |
| \$10.50 | Registered Mail |
| \$4.46 | Screws-Remaining Knobs falling off |
| \$117.60 | Surrey New/Used |
| \$64.35 | Home Depot |
| \$285.65 | Flooring Installation-Labour |
| \$950.00 | Rent Payment (Loss of Rental Income) |
| \$1,449.56 | Sub Total |
| | |
| \$5,614.56 | Total |

The landlord stated that this tenancy ended after the landlord served the tenant with a 1 Month Notice to End Tenancy issued for Cause (1 Month Notice) dated February 22, 2015 which sets out an effective end of tenancy date of March 31, 2015.

The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- the tenant has caused extraordinary damage to the unit.
- the tenant has not done required repairs of damage to the unit.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord noted during the hearing that the rental unit was given to the tenant on April 1, 2013 as noted on the condition inspection report and the addendum to the signed tenancy agreement for the move-in dated March 30, 2013 as a "new suite" in good condition for all aspects of the rental unit. The tenant, S.D. signed in acknowledgment of this agreement.

The landlord stated that at the end of tenancy on March 31, 2015 and the landlord noted the following conditions for the rental unit on April 1, 2015:

- "New Paint Needed" for the entry walls, kitchen walls, living room walls, and New Suite walls.
- A "DT" (Dirty) notation for each of all of the rooms in the rental unit.
- Entryway has Missing Bulb, Broken Screen, Broken Blinds, Dented and punctured door, pushed in electrical outlet and scratched floors.
- The kitchen has missing kitchen cabinet knobs, broken drawer, Burnt out exhaust light, dented refrigerator door (X3), broken dishwasher latch, Burnt out fixture light, broken microwave door.
- The living room has a burnt out light fixture bulb, a pushed in electrical outlet.
- The New Suite has a burnt out light bulb, broken/disabled smoke detector.
- The Main Bathroom has a broken sink and a broken door.
- The Master Bedroom walls have holes in the vapour barrier, stained carpets, a broken door and frame and a broken closet door.
- The exterior of the rental property has stored material left by the tenant.
- The basement has a missing electrical cover.

The tenant disputed the landlord's claims stating that the landlord refused to conduct an inspection for the move-out. The landlord disputed this stating that the tenant was given 3 different dates to conduct a final inspection with the landlord, but failed to do so. The tenant provided direct testimony admitting that 1 of the door and door frames was damaged, the bathroom sink was damaged, scratches on the hardwood floor and the heater in the bedroom was permanently marked. The tenant disputed the landlord's claim that holes on the wall were present at the beginning of the tenancy which the tenant filled in. The tenant also stated that there was no reason to replace the smoke alarm as it was disconnected and not damaged. The tenant, S.D. repeatedly claimed that she had evidence that would dispute the landlord's claims, but that she was too busy because of personal issues to submit them in response to the landlord's claims.

The landlord also relies upon:

- 27 Photographs of the rental unit at the beginning of the tenancy showing a new rental.
- A completed condition inspection report for the move-in completed by both parties on March 30, 2013.
- Approximately 123 photograph of the rental unit after the tenancy ended and after repairs were made.
- An incomplete condition inspection report completed only by the landlord.
- Monetary Worksheet for \$5,614.56 detailing total damage.
- Copies of 38 Invoices/Receipts for Repairs, Replacements and Services.

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 accept the undisputed documentary evidence of the landlord and the testimony of both parties. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. The tenants have provided conflicting and contradictory evidence. The tenant, S.D. admitted to damage to a door and door frame, a bathroom sink, scratches on the hardwood floor and a permanently marked heater in the bedroom. The tenants have confirmed that the condition inspection report for the move-in was completed at the beginning of the tenancy in the tenancy addendum, yet stated that she was too much in a rush to pay attention to the contents before it was signed on March 19, 2013. I note the addendum does not provide as much detail as a condition inspection report but states,

12. Condition Inspection- The tenant and Landlord have reviewed the entire suite. Photographs of each room have been taken.

The addendum also notes under, List of Deficiencies:

No noted deficiencies- March 30, 2013.

This notation was initialed by each of the tenants.

The landlord has provided photographs showing the condition of the rental unit at the beginning of the tenancy and photographs showing the condition of the rental unit at the end. In conjunction with the condition inspection reports provided by the landlord, I am satisfied that the landlord has provided sufficient evidence to establish his claim for damages. The landlord has provided evidence to show a clear comparison of the rental unit before and after the tenants took possession of the rental unit. The landlord has also provided detailed invoices/receipts for the costs for an actual amount being claimed. The landlord has established a monetary claim for \$4,165.00.

During the hearing, the landlord was advised that pursuant to section 72 of the Act claims for litigation are not recoverable. Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claims for recovery of litigation costs (postage, \$9.50 and \$10.50) are dismissed.

Using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the \$450.00 security deposit in partial satisfaction of the monetary award.

As the landlord has been successful in his application, I find that the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

Under the following terms, the landlord is awarded \$4,145.00, minus the \$450.00 security deposit, plus the recovery of his \$50.00 filing fee

I issue a monetary order in the landlord's favor in the amount of \$3,745.00.

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: December 17, 2015

Residential Tenancy Branch

