



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MUKS KUM OL HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MND, MNDC, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 29 minutes. The landlord's agent, DB ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she is the regional property manager for the landlord company named in this application and that she had authority to represent it as an agent at this hearing.

The landlord confirmed that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on September 23, 2015, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. The landlord confirmed that she checked the tracking number, which said that the package was delivered to the tenant and signed for on September 25, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on September 28, 2015, five days after its registered mailing.

I asked the landlord to provide me with coloured copies of photographs after this hearing. I had only received black and white photographs. The landlord tried to submit coloured copies to the RTB office prior to the hearing, but it was rejected. The landlord confirmed that the tenant was served with coloured photographs in the Application package. Accordingly, I received and considered the landlord's coloured photographs prior to writing this decision.

I amend the landlord's Application pursuant to section 64(3)(c) of the *Act*, to reduce the landlord's monetary claim from \$4,550.00 to \$4,089.50. The landlord said that she mistakenly included the \$400.00 security deposit in the amount sought rather than offsetting it against the monetary order. The landlord also said that she mistakenly claimed for \$3,200.00 instead of \$3,139.50 for drywall repair and painting. As this is a reduction rather than an increase in the landlord's monetary claim, I find no prejudice to the tenant in amending the landlord's Application.

Issues to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified that this tenancy began on October 15, 2014 and ended on September 3, 2015. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$400.00 as paid by the tenant and the landlord continues to retain this deposit. A copy of the written tenancy agreement was provided for this hearing.

The landlord confirmed that move-in and move-out condition inspection reports were completed for this tenancy but the move-out condition inspection report was completed in the tenant's absence because the tenant left the rental unit without notice to the landlord. The landlord noted that a written forwarding address was received from the tenant on September 3, 2015, by way of a letter. The landlord's Application was filed on September 15, 2015.

The landlord seeks a monetary order of \$4,089.50 total, which includes the \$50.00 filing fee paid for the Application. The landlord seeks \$300.00 to haul garbage to the landfill, \$600.00 to clean the rental unit and \$3,139.50 for drywall repair and painting.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$300.00 to haul garbage to the landfill. The landlord provided an invoice, dated September 14, 2015, for the above cost. The landlord provided photographs of the garbage left behind by the tenant at the rental unit. The tenant is required to vacate the rental unit and remove all of her personal belongings and possessions, including any garbage.

I award the landlord \$600.00 cleaning of the rental unit. The landlord provided an invoice, dated September 14, 2015, for the above amount. The landlord provided photographs of the dirty condition of the rental unit after the tenant vacated. As per Residential Tenancy Policy Guideline 1, the tenant is required to maintain “reasonable health, cleanliness and sanitary standards” throughout the rental unit during the tenancy and the tenant is also “generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.” I find that the tenant did not fully abide by the above guideline at the end of this tenancy and that the above amount is reasonable for cleaning the entire house, which the landlord said is a five-bedroom duplex of approximately 1,100 square feet.

I award the landlord \$1,000.00 of the \$3,139.50 sought for the drywall repair and painting. I find that this is a reasonable amount for the damages caused by the tenant, as shown in the landlord’s photographs. The landlord provided an invoice, dated September 23, 2015, for the \$3,139.50 cost claimed. The landlord said that the tenant caused holes and writing on the walls. The landlord said that the whole unit had to be repainted because of the damages caused by the tenant. However, I find that the tenant is not responsible for the entire cost of painting all walls, but rather repair and repainting of damaged areas caused by the tenant. The landlord did not provide any photographs of the walls in the rental unit when the tenant moved in. The landlord said that the unit was fully renovated and painted on October 10, 2014, before the tenant moved in, but the landlord did not provide an invoice for this cost, it only provided an invoice for the flooring when the tenant moved in. The photographs of the damage to the walls when the tenant moved out was limited and did not show the general condition of the walls, but rather close-up photographs of various areas of damage. The move-in condition inspection report notes that the walls and doors were in good condition. However, many portions of the

move-out condition inspection report show that more patchwork and touch-up painting was required rather than full painting of the walls.

As the landlord was mainly successful in this Application, I find that it is entitled to recover the \$50.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit, totalling \$400.00. Over the period of this tenancy, no interest is payable. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the entire security deposit in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,550.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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: March 31, 2016

Residential Tenancy Branch

