



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EXCLUSIVE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords on April 8, 2016 for a Monetary Order for damage to the rental unit, and to keep the Tenant’s security deposit. The Landlord also requested to amend her Application during the hearing to include a request to recover the filing fee from the Tenant which I permitted.

The Landlord appeared for the hearing and confirmed that she was also an agent for the company Landlord named on the Application. However, there was no appearance for the Tenant during the 33 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents for this hearing to the Tenant.

The Landlord testified that she served the Tenant with a copy of her Application by registered mail to the forwarding address the Tenant detailed in a letter at the end of the tenancy which was provided into evidence. The Tenant also wrote in that letter dated March 22, 2016 that she would be happy to receive paperwork by email.

The Landlord testified that she also sent the Tenant a copy of the Application and her evidence by email to the Tenant. Based on the undisputed evidence before me, I find the Landlords served the Tenant pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”). The hearing continued to hear the undisputed evidence of the Landlord.

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Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for damage to the rental unit?
- Did the Landlords extinguish their right to make a claim against the Tenant’s security deposit?

Background and Evidence

The Landlord testified that this tenancy started on November 1, 2011. A written tenancy agreement was signed which required the Tenant to pay rent in the amount of \$875.00 on the first day of each month. The Tenant paid a \$437.50 security deposit to the Landlord at the start of the tenancy which the Landlords still retain. The Landlord explained that the tenancy ended on March 31, 2016 and that a move-in or move-out Condition Inspection Report (the "CIR") was not completed for this tenancy.

The Landlord testified that the Tenant had illegally sublet the rental unit to two occupants who had left the rental unit at the end of the tenancy in a damaged and unclean state. The Landlord testified that the rental unit had not been cleaned and there was damage to the electrical sockets as well as holes in the living room ceiling where the Tenant or the occupants had installed a temporary structure. The Landlord testified that the Tenant had also painted four walls of the rental unit a bright orange colour without getting the Landlords' permission. The Landlord testified that the Tenant and/or the occupants had left a large amount of personal belongings, furniture, and garbage at the end of the tenancy all of which had to be removed and disposed of at the Landlords' cost.

The Landlord referred to extensive photographs in her documentary evidence to show the lack of cleaning that had been performed, the damage done to the rental unit, the painted walls, and the garbage that was left behind. The Landlord then referred to quotes she had obtained for the cost of remedying these issues. As a result, the Landlord claims \$450.00 for painting costs, \$500.00 for the removal of the Tenant's garbage and furniture, and \$400.00 for the cost of cleaning the rental unit and repairing the damages. The total amount of the Landlord's monetary claim is \$1,350.00.

Analysis

In this dispute, the Landlord seeks to claim the Tenant's security deposit based on damages to the rental unit. I accept that the tenancy ended on March 31, 2016 and that the Landlord made an Application pursuant to the 15 day time limit set by Section 38(1) of the Act to keep the Tenant's security deposit. However, Sections 23 and 35 of the Act states that a tenant and landlord together must inspect the condition of the rental unit at the start and end of a tenancy. These provisions of the Act continue to state that the landlord must complete the CIR in accordance with the regulations by providing the tenant opportunity to take part in it and that the CIR must be signed. Sections 24(2) and 36(2) states that the right of the landlord to claim against the security or pet damage

deposit for damage to the rental unit is **extinguished** if the landlord fails to comply with the reporting requirements as laid out in Section 23 and 35 of the Act.

In this case, I find that no move-in CIR was completed at the start of the tenancy and no arrangements or opportunity were made with the Tenant by the Landlord to conduct or complete the move-out CIR at the end of the tenancy. Therefore, I am only able to conclude that the Landlord failed to meet the reporting requirements of the Act. As a result, I must find that the Landlords' right to claim against the Tenant's security deposits was extinguished when these breaches occurred.

Policy Guideline 17 to the Act consists of a section titled "Return or Retention of Security Deposit through Arbitration." Point number 3 of this section states that an arbitrator **will** order the return of double the deposit if the landlord has made a claim **and** the right to make a claim has been extinguished under the Act. Therefore, I have no discretion and find that the Landlords must pay the Tenant double the security deposit in the amount of \$875.00. Accordingly, I dismiss the Landlords' Application to keep the Tenant's security deposit.

I now turn my mind to the Landlord's monetary claim for damages to the rental unit. In this respect, I rely on the undisputed oral evidence of the Landlord, coupled with the photographic evidence, and the invoice evidence to verify the losses being claimed. Section 37(2) (a) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. Policy Guideline 1 to the Act states that any changes to a rental unit not explicitly consented to by a landlord must be returned to the original condition.

I find the Landlord's evidence is sufficient to satisfy me that the Tenant failed to comply with Section 37(2) (a) of the Act and painted walls without the authority of the Landlords. I am satisfied by the invoice evidence of the losses being claimed and accordingly award the Landlords the full amount of the monetary claim of \$1,350.00.

As the Landlords had to pay the \$100.00 filing fee to make this Application to request this award, I find they are also entitled to recover this fee pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlords is \$1,450.00. The Act allows me to set off amounts that I find are payable to the parties. The Tenant is awarded \$875.00 for double the amount of the security deposit. The Landlords are awarded \$1,450.00 for their monetary claim for cleaning and damage to the rental unit. Therefore, the difference is \$575.00 payable by the Tenant to the Landlords.

Conclusion

The Tenant failed to clean the rental unit and caused damage to it. Therefore, the Landlords are awarded \$1,450.00 inclusive of the filing fee. The Landlords failed to meet the reporting requirements of the Act. Therefore, the Landlords' Application to keep the Tenant's security deposit is dismissed and the Tenant is awarded double the amount of \$875.00

The Landlords are issued with a Monetary Order for the remaining balance of \$575.00. This order is final and binding on the parties and may be enforced by the Landlords in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment.

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: August 24, 2016

Residential Tenancy Branch