



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended the call. The landlord's agent testified that the tenant was served with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on April 6, 2016 and has provided a copy of a Canada Post Registered Domestic Customer Receipt bearing that date and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence provided by the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on June 1, 2015 and was to expire on May 31, 2016 and thereafter revert to a month-to-month tenancy, however the tenant moved out of the rental unit and returned the keys to the landlord on March 18, 2016. Rent in the amount of \$625.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$325.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a studio apartment, and a copy of the tenancy agreement has been provided.

The landlord's agent further testified that the tenant failed to pay rent when it was due and the landlord was successful in obtaining an Order of Possession at arbitration on February 24, 2016. The tenant has not paid any rent for the months of February or March, 2016, and the landlord claims \$1,250.00.

The parties had participated in a move-in condition inspection report at the beginning of the tenancy, a copy of which has been provided. When the tenant returned the keys to the landlord, the tenant said she was going into a treatment centre, and the landlord's agent completed the move-out condition inspection report in the absence of the tenant.

The rental unit was new at the beginning of the tenancy, and the tenant was the first to ever reside in it. The landlord has also provided a Monetary Order Worksheet, setting out damages claimed as follows:

- \$60.00 for cleaning;
- \$288.75 for painting
- \$1,766.21 to replace the flooring;
- \$50.39 to repair the shower;
- \$75.00 for replacing a fridge drawer.

The Monetary Order Worksheet also claims \$100.00 for polishing and waxing, but the landlord was not charged that fee, and the landlord withdraws that part of the claim. Receipts for the cleaning, painting, new flooring, and a shower repair kit have been provided. Also provided are numerous photographs of the rental unit which the landlord's agent testified were taken during the move-out condition inspection. The landlord's agent testified that at the end of the tenancy, the shower had a hole through the top layer, so the landlord had to purchase a fiberglass repair product to cover the hold. The fridge drawer was cracked, and the landlord has a spare for parts, and the landlord's agent was able to replace the drawer with one from the fridge used for parts. Although no estimate or written receipt has been provided, the landlord's agent testified that an on-line search of GE Canada shows that the replacement cost of the drawer is \$75.00. The fridge was new at move-in.

The landlord's agent further testified that the tenant left a forwarding address in writing with the landlord when the keys were returned on March 18, 2016. That is the address that the tenant was served at with the hearing package for this hearing.

The landlord claims \$1,250.00 for unpaid rent, \$2,240.39 for cleaning and damages, recovery of the \$100.00 filing fee, and an order permitting the landlord to keep the \$325.00 security deposit in partial satisfaction of the claim.

Analysis

I explained to the landlord's agent the legal principle of *res judicata* which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decision to ensure that I did not make a finding on a matter that had already been heard and decided upon.

The Decision of the director of February 24, 2016 shows that the hearing was concerning the tenant's application for more time than prescribed to dispute a notice to end the tenancy, and for an order cancelling a notice to end the tenancy for cause given by the landlord. The Arbitrator found insufficient reasons for granting more time than prescribed, and dismissed the tenant's application.

I am satisfied that the landlord had not applied for nor received a monetary order for any of the claims set out in this dispute, and that none of the claims have been previously heard or adjudicated upon.

The regulations specify that a landlord and a tenant must participate in a move-in and a move-out condition inspection and must make a report. Also, the regulations specify that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. The tenant did not receive 2 opportunities to conduct the move-out condition inspection as required because the tenant had gone into treatment. That is contrary to the *Act*, and the consequence is that the landlord's right to claim against the security deposit for damages is extinguished.

I accept the undisputed testimony of the landlord's agent that the tenant moved out of the rental unit on March 18, 2016 without having paid any rent for February or March, 2016, and the landlord is entitled to monetary compensation in the amount of \$1,250.00.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

I have reviewed the receipts and photographs, as well as the move-in and move-out condition inspection reports, and I am satisfied that the landlord has established all elements in the test

for damages for the required cleaning, painting, flooring, and shower repair kit. With respect to the fridge drawer, there is no physical evidence of the cost for its replacement, but I accept the undisputed testimony of the landlord that replacement from GE Canada is \$75.00, and the fridge was new at the beginning of the tenancy. I find the amount to be reasonable, and I grant that amount.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

In summary, I find that the landlord has established a claim for unpaid rent in the amount of \$1,250.00; damages and cleaning costs of \$2,240.35 and recovery of the \$100.00 filing fee, for a total of \$3,590.35. I order the landlord to keep the \$325.00 security deposit in partial satisfaction and I grant a monetary order in favour of the landlord for the difference in the amount of \$3,265.35.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,265.35.

This order is final and binding and may be enforced.

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 25, 2016

Residential Tenancy Branch