



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E Y PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNSD, MND, MNR, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for painting and repairs and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

The landlord testified that she served the notice of hearing to the tenant, in person on February 15, 2016. The landlord provided a signed statement as proof of service. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for painting and repairs and for the filing fee?
Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on February 06, 2015 for a fixed term of one year, ending on January 31, 2016. Prior to moving in, the tenant paid a security deposit of \$850.00 and a fob deposit of \$100.00. The monthly rent was \$1,700.00 payable on the first day of each month.

On December 11, 2015, the tenant gave the landlord written notice to end the tenancy effective January 31, 2016. The tenant moved out on January 04, 2016 and a move out inspection was done in the presence of both parties. The tenant agreed with the report of the condition of the rental unit after the tenancy ended, signed the move out inspection report and provided the landlord with a forwarding address.

The landlord stated that a new tenant was found for January 15, 2016. The landlord made this application on February 10, 2016.

After the move out inspection was done, the landlord provided the tenant with a financial account of the cost of repairs and painting and the tenant agreed that he owed a portion of the landlord's claim in the amount of \$1,685.00. The tenant also agreed that he had caused damage to the kitchen cabinets under the sink but did not agree with the cost that the landlord was holding him responsible for.

In addition to the \$1,685.00 that the tenant has agreed to cover, the landlord is claiming an additional \$3,300.00 towards the cost of replacing the kitchen cabinets under the sink. The landlord stated that the actual cost was \$5,418.00 but the landlord was claiming only \$3,300.00. The cabinets were only one year old at the start of tenancy. The landlord filed an invoice to support her testimony, regarding the cost to replace the kitchen cabinets.

The landlord is applying for a monetary order to cover the additional costs she incurred that the tenant did not agree to cover (\$3,300.00), the amount that the tenant agreed to cover (\$1,685.00) and for the filing fee of \$100.00.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of the landlord, I find that the tenant moved out on January 04, 2016 and provided the landlord with a forwarding address that same day. A new tenant moved into the rental unit on January 15, 2016 and therefore the tenancy ended on January 15, 2016. The landlord made this application on February 10, 2016.

Even though the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of the end of tenancy, I find that the landlord had the signed consent of the tenant to retain the deposit towards the damages of \$1,685.00 that he agreed to cover. The landlord currently holds a security deposit and fob deposit totaling \$950.00.

Based on the documentary and oral evidence of the landlord, and in the absence of contradictory evidence, I find that the landlord is entitled to her claim of \$1,685.00 as agreed to by the tenant plus \$3,300.00 for the repair of the kitchen cabinets. .

Since the landlord has proven her case, she is also entitled to the filing fee of \$100.00.

Overall the landlord has established a claim of \$5,085.00.

I order that the landlord retain the security deposit and fob deposit of \$950.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$4,135.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$4,135.00**

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: September 23, 2016

Residential Tenancy Branch