



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on December 15, 2015. The Landlords filed seeking a \$3,758.54 Monetary Order for: damages to the unit, site or property; money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; to keep the security and pet deposits; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the female Landlord who provided affirmed testimony that she would be representing both applicants. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

No one was in attendance at the hearing on behalf of the Tenant. The Landlord provided affirmed testimony that the Tenant was served notice of this application, the notice of hearing documents, and their evidence by registered mail December 23, 2015. A copy of one receipt that had been omitted from the first package was sent via registered mail on September 06, 2016. Canada Post tracking receipts were submitted in the Landlords' documentary evidence.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed.

Based on the undisputed evidence of the Landlords, I find the Tenant was deemed served notice of this application and hearing on December 28, 2015, five days after they were mailed, in accordance with Section 90 of the *Act*. Accordingly, the hearing continued to hear the undisputed evidence of the Landlords in absence of the Tenant.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation for damages and loss of rent?

Background and Evidence

The Landlords submitted evidence that the Tenant entered into a month to month tenancy agreement that began on April 1, 2014. Rent of \$595.00 was payable on or before the first of each month. On March 28, 2014 the Tenant paid \$297.50 as the security deposit plus \$100.00 as a pet deposit. An additional \$100.00 was paid towards the pet deposit on May 29, 2015 bringing the pet deposit total to \$200.00.

A move in condition inspection report was completed in the presence of a Landlord and the Tenant on April 1, 2014 and the move out report was completed on November 30, 2015. The Landlord testified the Tenant did a good job in the general cleaning of the rental unit; however, as noted on the move out report, there was a "hideous cat urine/feces smell throughout suite".

The Landlord asserted that during an inspection they noticed the smell of cat urine/feces in the rental unit and began monitoring the situation. They issued the Tenant warnings about the smells. The Landlord stated the Tenant put forth an effort to mask the smells with the use of bleach and other sprays, after the issue was brought to her attention.

The Landlord described the rental unit as being a bachelor suite located in the basement of a duplex. She stated the unit has had updates and renovations with the most recent being completed in 2011. The Landlord stated the 2011 renovations included the installation of a new bathroom with slate floors and laminate flooring in the kitchen/dining room area. The remaining bedroom/living room area had carpet as flooring which was installed in 2005.

The Landlord testified she attempted to remedy the urine/feces smell initially by cleaning walls, flooring, and baseboards with bleach. She stated when her cleaning efforts failed to remove the smells she had no choice but to have the carpet and laminate flooring removed; seal the floor; and seal and paint the walls and baseboards to eliminate the smell.

The Landlord now seeks \$4,206.04 which is comprised of: \$1,299.38 to remove flooring; \$1,027.98 new laminate flooring cost; \$100.00 for labour to wash walls, flooring, and trim with bleach; \$1,050.00 labour costs to seal and paint the suite; \$101.03 for sealing products; \$32.65 for supplies; and \$595.00 for lost December 2015 rent.

The Landlord submitted that she began to advertise the rental unit as soon as she received the Tenant's October 31, 2015 notice to end tenancy. She stated that when she began to show the unit to prospective tenants they commented on the smell and then declined to rent the unit. The Landlord argued she lost rent for December 2015 as she was not able to re-rent the unit until the flooring was removed, sealed, and replaced. She stated she re-rented the unit in mid-January 2016.

Analysis

The *Residential Tenancy Act* (the *Act*) stipulates provisions relating to these matters as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the *Residential Tenancy Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 37(2) 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; and must return all keys to the Landlord.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

I accept the Landlords' undisputed evidence that the Tenant left the rental unit smelling of cat urine/feces which required additional cleaning and repairs. As such, I find the Tenant breached section 37 of the *Act* and that breach caused the Landlord to suffer a loss of: \$1,299.38 to remove flooring; \$1,027.98 new laminate flooring cost; \$100.00 for labour to wash walls, flooring, and trim with bleach; \$1,050.00 labour costs to seal and paint the suite; \$101.03 for sealing products; \$32.65 for supplies; and \$595.00 for lost December 2015 rent.

In addition, I accept the undisputed evidence that the Landlords did what was reasonable to mitigate their losses in accordance with section 7 of the *Act* by first attempting to clean the walls, flooring, and trim. When the cleaning did not work, I accept the Landlord's submission that they had to remove the damaged flooring; seal the concrete, walls, and trim; and install new flooring and paint.

Based on the above, I grant the Landlords' application for Dispute Resolution in the amount of **\$4,206.04**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$297.50 security deposit or the \$200.00 pet deposits.

I find this monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security and pet deposits plus interest as follows:

Repairs, cleaning & lost December 2015 Rent	\$4,206.04
Filing Fee	<u>50.00</u>
SUBTOTAL	\$4,256.04
LESS: Security & Pet Deposits	<u>-497.50</u>
Offset amount due to the Landlords	<u>\$3,758.54</u>

The Tenant is hereby ordered to pay the Landlords the offset amount of \$3,758.54, forthwith.

In the event the Tenant does not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$3,758.54** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlords have succeeded with their application and were awarded monetary compensation of \$4,256.04 which was offset against the Tenant's security deposit leaving a balance owed to the Landlords of **\$3,758.54**.

This decision is final, legally binding, and 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 12, 2016

Residential Tenancy Branch

