



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRANSCANADA PRODUCTS CORPORATION
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 or 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 a portion of the tenant's security deposit in full satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent, NW ("landlord"), and the tenant attended the hearing and were each 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 owner of the landlord company named in this application and that she had authority to speak on its behalf at this hearing. This hearing lasted approximately 63 minutes in order to allow both parties to fully present their submissions.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

The landlord confirmed receipt of the tenant's written evidence and USB drive. The landlord said that she was unable to see the USB drive because she had no computer. I advised both parties that I could not consider the tenant's USD drive at this hearing because she did not ensure that the landlord had playback equipment and was able to see the evidence before the hearing, contrary to Rule 3.10 of the Residential Tenancy Branch *Rules of Procedure*.

Issues to be Decided

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

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

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

Background and Evidence

Both parties agreed that this tenancy began on August 11, 2015 and ended on February 29, 2016. Monthly rent in the amount of \$1,350.00 was payable on the first day of each month. A security deposit of \$675.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The rental unit is a fully-furnished bachelor apartment with one bathroom and approximately 400 square feet total.

Both parties agreed that move-in and move-out condition inspection reports were completed for this tenancy but the tenant did not sign the move-out condition inspection report. Both parties agreed that the tenant provided a written forwarding address to the landlord. The tenant said that she gave the address in a letter which she personally delivered to the landlord on January 30, 2016. The landlord said that she received it on the move-out condition inspection report on February 29, 2016. The landlord stated that she did not have written permission from the tenant to retain any amount from her security deposit. The landlord confirmed that this Application to retain a portion of the security deposit was filed on March 14, 2016.

The landlord seeks \$23.89 in registered mail costs for sending hearing-related documents to the tenant. The landlord also seeks to recover the \$100.00 filing fee paid for the Application.

The landlord also seeks \$50.00 for general cleaning of the rental unit after the tenant vacated. The landlord provided an invoice for the above amount and a letter regarding the breakdown of the cleaning that was done. The landlord provided photographs of the rental unit from December 18, 2015, prior to the tenant moving out. The landlord said that she did not indicate that cleaning was required in the move-out condition inspection report because she was arguing with the tenant during that time. The tenant disputes

the landlord's cleaning charges, stating that she cleaned the entire rental unit and the landlord's photographs should not be considered because they were taken before she moved out.

The landlord seeks \$50.00 for cleaning the blinds and balcony at the rental unit. The landlord provided an invoice from her own company, indicating that she cleaned these areas herself. She said that she did not indicate these items in the move-out condition inspection report. She said that the tenant left cigarette butts on the balcony when she smoked with the next-door neighbour. The landlord maintained that she sent multiple letters to the tenant to clean her cigarette butts from the balcony and the tenant did not comply. The tenant disputes the landlord's claim, stating that she cleaned the entire rental unit and she is a non-smoker so she did not leave any cigarette butts on the balcony. She said that the landlord's letters regarding the cigarette butts are addressed to all four rental units in the building and that the other people in the rental building smoked.

The landlord seeks \$100.00 for sanding and painting holes in the wall at the rental unit. The landlord provided an invoice for this cost. She said that the tenant caused six big holes in the wall by putting up curtain rods near the windows and then removing these rods and leaving holes. The landlord maintained that there were blinds in place and she advised the tenant not to put up curtains. The landlord said that the tenancy agreement references blinds only, not curtains, as included in rent. The landlord said that she had to repaint two entire walls, due to these holes. The landlord indicated that filling and painting the walls was required in the move-out condition inspection report. The tenant said that on February 27, 2016, she put putty and sanded and painted the two holes that she caused when she removed the curtain rods. She maintained that she used the original paint for the walls which was located inside a storage closet of the rental unit. The tenant explained that she spoke with the painter from the invoice issued by the landlord and was told that he was already scheduled to come in and paint the walls before the tenant moved out and it was arranged without the tenant's permission. The tenant questioned the authenticity of the landlord's painting invoice, stating that it looked like it was issued by the landlord company, not another person.

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. 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.

As advised to both parties during the hearing, I dismiss the landlord's claim for registered mail fees, totaling \$23.89, as the only hearing-related costs recoverable under section 72 of the *Act* is for filing fees.

I dismiss the landlord's claim for \$50.00 for general cleaning of the rental unit. The landlord failed to meet parts 1 and 2 of the above test. The landlord did not indicate general cleaning to be done on the move-out condition inspection report. The landlord did not provide photographs of the condition of the rental unit after the tenant moved out, only while she was living there. I accept the tenant's evidence that she adequately cleaned the rental unit.

I dismiss the landlord's claim for \$50.00 to clean the blinds and balcony at the rental unit. The landlord failed to meet parts 1 and 2 of the above test. The landlord did not indicate the above cleaning to be done on the move-out condition inspection report. The landlord did not provide photographs of the condition of the rental unit after the tenant moved out, only while she was living there. The landlord's letters to the tenant regarding the cigarette butts were also sent to the other units in the rental building and allege that they are all smoking and leaving cigarette butts. I accept the tenant's evidence that she adequately cleaned the rental unit, including the balcony and blinds, and that she did not smoke or leave cigarette butts on the balcony, since other people in the rental building did.

I dismiss the landlord's claim for \$100.00 for painting and sanding the two walls in the rental unit. The landlord failed to meet parts 1 and 2 of the above test. The landlord did not provide photographs of the condition of the rental unit after the tenant moved out, only while she was living there. I accept the tenant's evidence that she filled, sanded and painted with the original colour, the two holes caused by the curtain rods in the rental unit. I find that the tenant repaired the damage to the walls that she caused and she is not responsible for painting two entire walls in order to repair the two holes.

As the landlord was unsuccessful in this Application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$675.00. Over the period of this tenancy, no interest is payable on the deposit. As the landlord is not entitled to retain this deposit, I order the landlord to return the tenant's entire security deposit in the amount of \$675.00 to the tenant.

Conclusion

The landlord's entire Application is dismissed without leave to reapply.

I order the landlord to return the tenant's entire security deposit in the amount of \$675.00 to the tenant.

I issue a monetary order in the tenant's favour in the amount of \$675.00 against the landlord and the landlord must be served with this Order as soon as possible. Should the landlord 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: November 07, 2016

Residential Tenancy Branch