



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for damage to the unit, site or property, for authorization to retain all or part of the tenants' security deposit and pet damage deposit, and to recover the cost of the filing fee.

An agent for the landlord (the "agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide his evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent testified that the Notice of Hearing, Application and documentary evidence was served on tenant B.V. only by registered mail on May 18, 2016 and was signed for and accepted on May 20, 2016. The registered mail tracking number has been included on the cover page of this decision for ease of reference. The online registered mail tracking information supports the testimony of the agent. Based on the above, I accept that tenant B.V. was served on May 20, 2016, with the Application, Notice of Hearing and documentary evidence as that was the date the registered mail package was signed for and accepted.

Preliminary and Procedural Matters

The agent was advised during the hearing that due to tenant B.V. being the only tenant to be served, if the landlord was successful with any portion of their monetary claim and a monetary order was granted, any resulting monetary order would name tenant B.V. only. The agent stated that he wished to proceed with the hearing and that he

understood that any resulting monetary order would name tenant B.V. only as he was the only tenant served with the Notice of Hearing and Application.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The first fixed term tenancy began on May 1, 2011 and was renewed each year for an additional one year fixed term with the last fixed term being May 1, 2015 and ending on April 30, 2016. The agent testified that the tenant vacated the rental unit and returned the rental unit keys on May 2, 2016. The original monthly rent in 2011 was \$1,250.00 per month and due on the first day of each month. By the end of the last fixed term tenancy, monthly rent was \$1,275.00 per month and due on the first day of each month. At the start of the tenancy, the tenants paid a security deposit of \$625.00 and a pet damage deposit of \$625.00 both of which the landlord continue to hold and have accrued no interest to date.

The landlord's monetary claim for \$972.30 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning of unit including walls and ceiling (18 hours at \$32.00 per hour)	\$576.00
2. Carpet cleaning (upstairs carpets and spot removal)	\$200.00
3. Machine rental for cigarette smell removal	\$150.00
4. GST on items 1 to 3 above.	\$46.30
TOTAL	\$972.30

Regarding item 1, the agent referred to the incoming and outgoing condition inspection reports submitted in evidence in support of the cleaning required and the dirty condition the rental unit was left in at the end of the tenancy. The agent testified that it took 18 hours at \$32.00 to clean the rental unit due to the condition it was left in. Many of the areas listed on the outgoing condition inspection report were listed as dirty. The agent also referred to the estimate dated May 9, 2016 in support of his testimony.

The agent testified that a deep cleaning of the rental unit was required due to the tenants being heavy smokers. The tenant described much of the rental unit as “brown and sticky” and that although the landlord suffered other costs the landlord is not claiming additional costs other than what is described in the monetary claim above.

Regarding item 2, the agent requested to withdraw this portion of their claim during the hearing as the landlord decided to replace the carpets and as a result, will absorb the cost of the carpet cleaning.

Regarding item 3, the agent stated that the landlord suffered a loss of \$150.00 to rent an ionizer to remove the heavy smoke smell in the rental unit. The agent referred to an invoice submitted in evidence in support of this portion of their claim. The cost of the ionizer was \$50.00 per day multiplied by three days.

Regarding item 4, the agent agreed to reduce the GST being claimed due to the withdrawal of item 2 during the hearing. As a result, the GST being claimed is reduced from \$46.30 to \$36.30 which is 5% of the reduced claim of \$726.00 after item 2 was deducted as indicated above.

Analysis

Based on the undisputed documentary evidence and unopposed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As tenant B.V. was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful in the amount of **\$762.30** as I find the tenant breached the following section of the *Act*:

- Section 47 of the *Act* which requires the tenants to leave the rental unit reasonably clean at the end of the tenancy which I find the tenants failed to do.

In addition to the above, I find the landlord's claim to be reasonable and that the landlord complied with section 7 of the *Act* which requires the landlord to do what is reasonable to minimize their loss. The landlord minimized their loss by reducing the carpet cleaning as the landlord decided to replace the carpets. In addition, the landlord also reduced the GST portion of their claim accordingly.

As the landlord's application was successful, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**. As a result, I find the landlord has established a total monetary claim of **\$862.30**. The landlord continues to hold the tenants' security deposit of \$625.00 and pet damage deposit of \$625.00 which has not accrued any interest to date. The tenants' combined deposits therefore total \$1,250.00.

I authorize the landlord to retain **\$862.50** of the tenants' combined deposits of \$1,250.00 in full satisfaction of the landlord's monetary claim. I grant the tenants a monetary order pursuant to section 67 of the *Act*, for the balance of their combined deposits owing by the landlord to the tenants in the amount of **\$387.70**.

Conclusion

The landlord's application is fully successful.

The landlord has been authorized to retain \$862.30 of the tenants' combined deposits which total \$1,250.00 in full satisfaction of the landlord's monetary claim. The tenants are granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenants in the amount of \$387.70. Should the landlord not pay the tenants the \$387.70, the tenants must serve the landlord with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: November 25, 2016

Residential Tenancy Branch