



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 Landlord on August 26, 2016. The Landlord filed seeking a \$2,153.69 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 deposit; and to recover the cost of the filing fee. On October 19, 2016 the Landlord filed an amended application to increase their monetary claim to \$3,842.31.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance at the hearing on behalf of the Tenant. The Landlord provided evidence that the Tenant was personally served with copies of her application for Dispute Resolution, notice of hearing documents, and evidence on August 26, 2016. The amended application was served upon the Tenant on October 19, 2016 via registered mail.

Based on the undisputed evidence of the Landlords, I find the Tenant was sufficiently served notice of this application; hearing; amended application; and evidence in accordance with Section 89(1) of the *Act*. Accordingly, the hearing continued to hear the undisputed evidence of the Landlord in absence of the Tenant.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a fixed term written tenancy agreement that began on February 1, 2011 and switched to a month to month tenancy after one year. Rent of \$1,110.00 was payable on or before the first of each month and was subsequently increased to \$1,170.00. On January 14, 2011 the Tenant paid \$555.00 as the security deposit.

The Landlord testified they completed a condition inspection report form at move in on February 1, 2011. He stated that when he attended the rental unit on August 16, 2016 to complete the move out condition inspection report form the Tenant grabbed the form from his hands, tore it up, and took it with her.

On July 29, 2016 the Tenant issued a written notice to end her tenancy effective August 15, 2016. The Tenant did not provide a forwarding address to the Landlord. The Landlord stated he received short notice that the Tenant would be moving and then was faced with having to clean the unit. The unit was not re-rented until October 1, 2016. As such the Landlord is seeking loss of rent for one half of a month's rent in the amount of \$585.00.

The Landlord testified the Tenant left the rental unit damaged, dirty, and filled with debris. The Landlord submitted photographic evidence; one \$239.42 receipt for cleaning materials, light bulbs, and floor sealer; \$4,157.88 for the items on the Landlord's hand written list claiming: a new refrigerator \$789.87; stove \$712.55; range hood \$223.98; counter top \$201.60; light fixtures \$47.85; new blinds \$248.60; other miscellaneous items; and labour costs to remove debris and clean.

The Landlord stated the rental unit was an apartment in a building he had managed since February 1999. The building was built in 1955. The Landlord said the appliances were new at the start of this tenancy. The Landlord submitted that he billed his time to clean the unit at \$22.00 per hour.

Analysis

The *Residential Tenancy Act* (the *Act*), and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters which I have considered, 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 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

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.

Residential Tenancy Policy Guideline 16 provides that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

Residential Tenancy Policy Guideline 16 states that an Arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

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.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

I accept the Landlord's undisputed evidence that the Tenant left the rental unit requiring additional cleaning and repairs. Therefore, I find the Tenant breached section 37 of the *Act*. In addition, I find there was sufficient evidence to prove the Tenant's breach caused the Landlord to suffer a loss.

In regards to the monetary claim for labour; debris removal; cleaning costs; and keys; I find the amounts claimed by the Landlord to be reasonable given the conditions displayed in the photographs and the receipt for supplies submitted into evidence. Accordingly, I find the Landlord provided sufficient evidence to prove the amounts claimed for debris removal, cleaning and supplies (\$132.00 + \$330.00 + \$462.00 + \$230.00 + \$239.42 + \$26.25) and grant the application in the amount of **\$1,419.67**, pursuant to section 67 of the *Act*.

In determining the value of the loss of appliances and fixtures, pursuant to Policy Guideline 40, I considered the normal useful life of the fridge, stove, and range hood to be 15 years; blinds 10 years; sink 20 years; counter 25 years; and light fixtures and switch plates to be 15 years.

The Landlord claimed \$2,392.63 for the aforementioned items. There were no estimates or receipts from appliance and/or fixture suppliers submitted into evidence. As such I find the Landlord has provided insufficient evidence to prove the exact value of the loss of those items. Therefore, I conclude the Landlord is entitled to nominal damages for the appliances and fixtures (\$25 stove + \$25 fridge + \$5 range hood + \$5 blinds + \$10 sink + \$10 counter + \$5 light fixtures and switch plates), for the total amount of **\$85.00**, pursuant to section 67 of the *Act*.

I accept the Landlord's submission that the Tenant provided insufficient notice to end their tenancy in breach of Section 45 of the *Act*. In this case, notice provided on July 29, 2016 would not be effective until August 31, 2016 as rent was payable on the first of each month. The Tenant vacated on August 15, 2016 and failed to pay the rent for the full month of August. The Tenant's breach of sections 45 and 37 of the *Act* caused the Landlord to suffer a loss of rent for the last half of August 2016 of \$585.00. Accordingly, I grant the Landlord request for loss of rent in the amount of **\$585.00**, pursuant to section 67 of the *Act*.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$555.00 security deposit since January 14, 2011.

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

Labour, debris removal, cleaning, keys	\$1,419.67
Nominal Damages for appliances	85.00
Loss of Rent ½ of August 2016	585.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$2,189.67
LESS: Security Deposit \$555.00 + Interest \$0.00	<u>-555.00</u>
Offset amount due to the Landlords	<u>\$1,634.67</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$1,634.67 forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$1,634.67** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlord has partially succeeded with their application and was awarded monetary compensation of \$2,189.67 which was offset against the Tenant's security deposit, leaving a balance owed to the Landlord of **\$1,634.67**.

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: November 29, 2016

Residential Tenancy Branch