



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord to keep the Tenants’ security and pet damage deposits and to recover the filing fee from the Tenants.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. There was no appearance for the Tenants during the 20 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the Landlord’s service of documents.

The Landlord testified that the Tenants were each served with a copy of the Application and the Notice of Hearing documents by registered mail on June 13, 2016 to their forwarding address the Tenants had provided at the end of the tenancy. The Landlord submitted the Canada Post tracking numbers into evidence to verify this method of service.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenants were deemed served with the required documents on June 18, 2016 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Landlord as follows.

Issue(s) to be Decided

- Is the Landlord entitled to damages to the rental unit?
- Is the Landlord entitled to keep the Tenants’ security and pet damage deposits?

Background and Evidence

The Landlord testified that this tenancy started on April 1, 2016 on a month to month basis. A written tenancy agreement was completed which required the Tenants to pay rent in the amount of \$800.00 on the first day of each month. The Tenants paid the Landlord a security deposit of \$4500.00 and \$450.00 as a pet damage deposit at the start of the tenancy; these are herein referred to collectively as the "Deposits" in this Decision. The Landlord still retains the Deposits.

The Landlord completed a move-in Condition Inspection Report (the "CIR") with the Tenants on April 1, 2016. The Landlord testified that the Tenants provided written notice at the end of April 2016 to end the tenancy on May 31, 2016. The Landlord provided the move-out CIR into evidence which was completed with the Tenants on May 30, 2016. The Landlord also pointed to a letter the Tenants had sent him dated May 27, 2016 which detailed their forwarding address.

The Landlord testified that the Tenants had failed to clean the rental unit and shampoo the carpets as they had dogs. The Landlord testified that the rental unit was a no smoking unit but the Tenants engaged in smoking activity during the tenancy. The Landlord referred to his photographic evidence to show the lack of cleaning to the rental unit and the smoking paraphernalia used by the Tenants.

The Landlord testified that as the Tenants had smoked in the rental unit, he had to clean and wash down all the walls and ceilings and have them re-painted. The Landlord testified that he had provided the rental unit to the Tenants clean with fresh paint and shampooed carpets. The Landlord also explained that the Tenants had caused damage to the lawn which he had to treat.

The Landlord makes a total claim of \$214.71 for painting, cleaning, and lawn feed supplies. The Landlord provided invoice evidence for these costs. The Landlord claims \$300.00 in labor costs which comprises of 25 hours of work he completed for which he charged \$12.00 per hour. The Landlord hired a professional shampoo machine with shampoo supplies to clean the carpets. The total amount of the Landlord's monetary claim is \$569.06.

The Landlord explained that on his Application he had only sought to claim \$500.00 but this amount had increased since that time. The Landlord explained that he did not amend the amount on his Application as he had already applied to keep all of the Tenant's Deposits on the Application.

Analysis

I accept the Landlord's evidence that the Tenants ended this tenancy on May 31, 2016 with their written notice. I also accept the Landlord's evidence that the Tenants had served the Landlord with their forwarding address in writing prior to the tenancy ending. Therefore, I find the Landlord made the Application to keep the Tenants' Deposits within the 15 day time limit provided by Section 38(1) of the Act.

In relation to the Landlord's monetary claim, I amend the Landlord's Application pursuant to my authority under Section 64(3) (c) of the Act to increase the amount claimed from the Deposits to \$569.06. This is because the Landlord had put the Tenants on notice of his intent to hold onto the Deposits pending a decision on this matter. Therefore, I find there was no prejudice to the Tenants for the additional \$69.06 the Landlord claims in this dispute.

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary. Policy Guideline 1 to the Act details the responsibility of both a landlord and a tenant for residential premises. In relation to carpets, the guideline explains that a tenant is expected to steam clean or shampoo the carpets at the end of the tenancy if they have had pets.

Taking into consideration the undisputed evidence of the Landlord before me, and the lack of any preponderance of evidence from the Tenants or their appearance at this hearing, I find the Tenants have failed to comply with Section 37(2) of the Act. I find the Tenants: left the rental unit unclean; damaged the lawn; and failed to clean the carpets pursuant to the above provisions. I am satisfied by the: CIR; Landlord's oral evidence; supporting photographic evidence; and the invoice evidence claimed for the expenses incurred, that the Tenants are liable for these losses in the amount of \$569.06.

As the Landlord has been successful in this matter, the Landlord is also entitled to the \$100.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$669.06.

Accordingly, the Landlord is allowed to deduct \$669.06 from the Tenants' \$800.00 Deposits. The remaining balance of \$130.94 is to be returned to the Tenants forthwith. The Tenants are issued with a Monetary Order for the remainder of their Deposits. Copies of this order are attached to the Tenants' copy of this Decision. If the Landlord

fails to make payment, this order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court.

Conclusion

The Tenants have breached the Act by causing damage to the rental unit. Therefore, the Landlord may keep \$669.06 from the Tenants' Deposits and return to them the remaining amount of \$130.94.

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: December 01, 2016

Residential Tenancy Branch