



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage and/or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 2:00 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on July 19, 2016, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. Subsequently on December 20, 2016, a copy of the landlord's 32 page evidence package was sent to the tenant. The landlord testified the above documents were sent to a forwarding address provided by the tenant's former spouse. The landlord testified that the tenant vacated the rental unit sometime in May 2016 but the tenant's former spouse, who was an occupant as per the tenancy agreement, vacated on June 30, 2016. The landlord testified the tenant advised the landlord to deal with his former spouse in respect to the return of the security deposit and submitted e-mail correspondence between the landlord and the tenant confirming such. The landlord provided registered mail tracking numbers in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to a monetary award for damage and/or loss?

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

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

Background and Evidence

The tenancy for this strata unit began on March 1, 2015 with a monthly rent of \$2250.00 payable on the 1st day of each month. The tenant paid a security deposit of \$1125.00 at the start of the tenancy which the landlord continues to hold.

The landlord provided a monetary order worksheet in which he claims a total of \$651.90 comprised of the following:

1. \$50.00 for replacement of a visitor pass. The landlord testified the tenant did not return this pass which is reflected as being issued to the tenant in the move-in condition inspection report. The landlord submitted a copy of the move-in inspection report and a receipt for \$50.00 paid by the landlord to have this pass re-issued.
2. \$104.90 for removal of a bottle cap which caused the kitchen garburator to jam. The landlord provided a receipt from an appliance repair company to clear the jam and remove the bottle cap. The landlord testified the jam was caused by neglect by the tenant.
3. \$147.00 for removing a stain from a bedroom carpet. The landlord provided a receipt for the stain removal. The landlord testified the stain was caused by the tenant and was not present at the time of the move-in inspection.
4. \$250.00 for fines issued by the strata due to actions or neglect of the tenant. A \$50.00 fine was levied against the landlord for improper storage of items in a parking stall and a \$200.00 fine for a move contrary to the strata by-laws.
5. \$100.00 for re-imbursement of the filing fee for this application.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant 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 other party 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 applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I accept the landlord's uncontested testimony and supporting documents as evidence that the landlord suffered a loss as claimed and that it occurred due to the actions or neglect of the tenant. The landlord has also submitted receipts in support of the actual amounts required to compensate for the loss or repair the damage for each item claimed.

I find the landlord is entitled to a monetary award in the amount of the established loss of \$551.90. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$651.90.

The landlord continues to hold a security deposit in the amount of \$1125.00. I allow the landlord to retain \$651.90 of the security deposit in full satisfaction of the monetary award pursuant to section 38 of the *Act*.

Conclusion

The landlord is entitled to a monetary award in the amount \$651.90 which can be retained from the security deposit in full satisfaction of the monetary award.

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: January 16, 2017

Residential Tenancy Branch