



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on August 1, 2016. The Landlord filed seeking a 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.

The hearing was conducted via teleconference and was attended by an Agent for the Landlord (the Landlord). No one was in attendance at the hearing on behalf of the Tenant. The Landlord provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail August 5, 2016. Canada Post tracking receipts were submitted in the Landlord's documentary evidence.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

Based on the above, I find the Tenant was deemed served notice of this proceeding on August 10, 2016; five days after they were mailed pursuant to section 90 of the *Act*. As the Tenant was deemed served notice of this hearing, I continued to hear the undisputed evidence of the Landlord, in absence of the Tenant.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation?
2. If so, is the Landlord entitled to retain the security deposit?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a fixed term written tenancy agreement that began on March 1, 2014 which switched to a month to month tenancy after six months. Rent began at \$900.00 per month and was subsequently increased to \$949.25 effective May 1, 2016. On January 25, 2014 the Tenant paid

\$450.00 as the security deposit; \$10.00 as the laundry card deposit; and \$200.00 as the pet deposit.

On June 30, 2016 the Landlord received a written notice to end tenancy from the Tenant. That notice indicated the Tenant's notice would be effective July 31, 2016.

The Landlord stated the Tenant was present during the move-in inspection and both parties signed the condition inspection report form. The Tenant did not appear at the move out inspection; however, the Tenant's mother was at the rental unit cleaning when the Landlord appeared to conduct the move out inspection.

The Tenant's mother was not prepared to sign the condition inspection report form on behalf of the Tenant. The Landlord said she called the Tenant and discussed the damage that had been caused to the laminate flooring; as per the photographic evidence submitted by the Landlord. The Tenant refused to agree the Landlord could keep the security deposit.

The Tenant provided the Landlord with her forwarding address on July 31, 2016 during the aforementioned telephone conversation. The Landlord stated she returned the Tenant's pet deposit a day or two after the end of tenancy. The Tenant did not return the laundry card so was not entitled to the return of that card deposit.

The Landlord now seeks \$400.00 towards the replacement costs of the laminate flooring which exceeded that deposit. The Landlord submitted the receipts for that flooring replacement and noted that the laminate flooring had been brand new at the start of this tenancy in March 2014.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find 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:

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

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; and must return all keys to the Landlord.

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 the Tenant's breach caused the Landlord to suffer a loss greater than the \$400.00 claimed. Accordingly, I grant the Landlord's application for \$400.00 damages, pursuant to section 67 of the 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.

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.

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

Laminate flooring damage	\$ 400.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$ 500.00
LESS: Security Deposit \$400.00 + Interest \$0.00	<u>-450.00</u>
Offset amount due to the Landlord	<u>\$ 50.00</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$50.00, 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 **\$50.00** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlord has succeeded with their application and was awarded monetary compensation of \$500.00 which was offset against the Tenant's security deposit leaving a balance owed to the Landlord of **\$50.00**.

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: February 03, 2017

Residential Tenancy Branch