



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This is an application brought by the Landlord requesting a monetary order in the amount of \$529.55, and recovery of the \$100.00 filing fee, and requested order to retain the full security deposit towards the claim.

The applicant testified that the respondent(s) were served with notice of the hearing by registered mail that was mailed on August 8, 2016 however the respondent(s) did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent(s) have been properly served with notice of the hearing and I therefore conducted the hearing in the respondent's absence.

All parties were affirmed.

Issue(s) to be Decided

The issues are whether or not the applicant has established monetary claim against the respondents and if so in what amount, and whether or not the applicant has the right to retain the security deposit towards any monetary claim.

Background and Evidence

The applicant testified that this tenancy began on March 1, 2016 with a monthly rent of \$800.00 due on the first of each month.

The applicant further testified that the tenants paid a security deposit of \$400.00 on March 1, 2016 and he is still holding that deposit.

The applicant further testified that the tenancy ended around November 21, 2016 and at the end of the tenancy there was no rent outstanding.

The applicant further testified that at the beginning of the tenancy there was a move-in inspection report done; however at the end of the tenancy he did not do a move-out inspection report, as he was recovering from knee surgery, and therefore he just left it up to the new tenant to deal with the respondent.

The landlord further testified that the tenant left the following damages at the end of the tenancy:

- One door was badly broken and had to be replaced at a cost of \$150.00.
- Six blinds had been broken by the tenants dogs which also had to be replaced at a cost of \$100.14.
- The tenant had attempted to do some unauthorized work on the washer and dryer, and as a result damaged it, and it had to be repaired at a cost of \$180.23.

The landlord further testified that the tenant failed to pay the Nelson Hydro electric bill, and as a result he had to pay that bill, which came to \$79.18.

The landlord further testified that the tenant left and significant amount of garbage behind, which the new tenant had to remove to the dump and had to pay dump fees of \$20.00, which he reimbursed to the new tenant.

The landlord is therefore requesting a monetary order as follows:

Repair bathroom door	\$150.00
Replace damaged blinds	\$100.14
Washer/dryer repairs	\$180.23
Unpaid electrical utility	\$79.18
Garbage dump fees	\$20.00
Filing fee	\$100.00
Total	\$629.55

Analysis

I have reviewed the evidence and testimony supplied by the landlord and it is my finding that the landlord has established the full amount claimed.

The landlord has shown that the tenant left the bathroom door damaged and in need of repair, has shown that 6 window blinds had to be replaced, has shown that the washer and dryer required repair at the end of the tenancy, has shown that the tenant failed to pay the electrical utility, and has shown that the tenant left a significant amount of garbage which had to be removed to the dump.

I therefore allow the landlords full claim of \$529.55, and recovery of the \$100.00 filing fee for a total of \$629.55

With regards to the landlords request to retain the security deposit towards the claim, section 36(2) of the Residential Tenancy Act states:

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property **is extinguished** if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case, the landlord has admitted that he did not do a move-out inspection report, and therefore the landlord's right to claim against the security deposit had been extinguished, and he was required to return that deposit within 15 days of the end of the tenancy or the date he got a forwarding address in writing, whichever is the later.

The landlord stated that he did not do the move-out inspection as he was recovering from knee surgery, however the Residential Tenancy Act does allow the landlord to use an agent to act on his behalf, and I fail to see why the landlord could not have followed this route.

In a previous arbitration hearing the arbitrator stated:

The Tenant confirmed her forwarding address was as noted on her Application for Dispute Resolution. As the Landlord was at the hearing, I find that he has

received the Tenant's forwarding address as of the date of the hearing, July 25, 2016.

Therefore, pursuant to section 38 of the Residential Tenancy Act the landlord was required to return the security deposit within 15 days of July 25, 2016 and since he failed to do so he is required, pursuant to section 38(6), of the Residential Tenancy Act, to pay double the deposit to the tenant.

The tenant paid a deposit of \$400.00, and therefore, the landlord is required to pay \$800.00 to the tenant.

Conclusion

I have allowed the landlords full claim of \$629.55 and I have therefore set off that amount against the \$800.00 security deposit amount the landlord was required to pay to the tenant, and I have issued an order for the landlord to pay the remaining amount of \$170.45 to the tenants.

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: February 03, 2017

Residential Tenancy Branch