



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 by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") for a Monetary Order for: damage to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenant's security deposit; and, to recover the filing fee.

The Landlord appeared for the hearing and provided affirmed testimony. The Landlord also provided documentary and photographic evidence prior to the hearing. There was no appearance for the Tenant during the ten minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified that she served the Tenant with a copy of the Application and the Hearing Package by registered mail on August 19, 2016 to the Tenant's forwarding address provided by email. The Landlord provided the Canada Post tracking number into evidence to verify this method of service. The Landlord explained that the documents were returned to her as unclaimed.

Section 90(a) of 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 the Tenant was deemed served with the required documents on August 24, 2016 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Landlord.

Issue(s) to be Decided

- Is the Landlord entitled to cleaning and damages to the rental unit?
- Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

The Landlord testified that this tenancy started on February 1, 2012 for a fixed term of one year after which the tenancy continued on a month-to-month basis. A written tenancy agreement was signed which required rent in the amount of \$1,250.00 payable on the first day of each month, which was then increased to \$1,277.50 during the tenancy. The Tenant paid a security deposit of \$625.00 on January 10, 2012 which the Landlord still retains.

The Landlord completed a move-in Condition Inspection Report (the "CIR") on January 31, 2012. The Landlord testified that the tenancy ended when the Tenant gave written notice on June 20, 2016 to end the tenancy for July 31, 2016. The Landlord testified that prior to the tenancy ending a move-out condition inspection of the rental unit was arranged for July 31, 2016 which the Tenant failed to appear for. The Landlord confirmed that the Tenant provided her forwarding address by email on July 30, 2016. The Landlord used that address to file this Application on August 15, 2016.

The Landlord testified that at the end of the tenancy, the Tenant failed to clean the rental unit. In particular, the tenant did not clean or degrease the kitchen and failed to clean and sanitize two bedroom carpets. The Landlord testified that two walls of the living room had to be repaired and repainted and that the master bedroom closet railing had to be re-installed. The Landlord testified that the all the kitchen knobs and the front door jamb had to be replaced.

The Landlord provided extensive photographs to evidence the damages and lack of cleaning done by the Tenant. The Landlord had the cleaning and repairs completed by a contractor who provided an invoice for a total cost of these items in the amount of \$1,302.00. The Landlord also provided the CIR into evidence to support the claim.

Analysis

I have considered the undisputed evidence of the Landlord and I make the following findings. I accept the Landlord's evidence that the tenancy ended on July 31, 2016 and that the Tenant provided the Landlord with her forwarding address prior to the tenancy ending. Therefore, I find that the Landlord applied to keep the Tenant's security deposit within the 15 day time limit provided by Section 38(1) of the Act.

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 explains that generally, at the end of a tenancy, the Tenant will be held responsible for shampooing or steam cleaning the carpets after a tenancy of one year.

Based on the foregoing evidence, I find the Landlord has provided sufficient oral and supporting evidence that the Tenant failed to comply with Section 37(2) of the Act. The Tenant failed to appear for this hearing and did not provide a preponderance of evidence to dispute the Landlord's evidence. Therefore, I find the Landlord has proved the Application claim amount of \$1,302.00.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for the cost of this Application. Therefore, the total amount awarded to the Landlord is \$1,402.00. As the Landlord already holds \$625.00 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining balance of \$777.00. This order must be served to the Tenant and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment.

Conclusion

The Landlord has proved damages to the rental unit. The Landlord may keep the Tenant's security deposit and is issued a Monetary Order for the remaining balance of \$777.00. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 14, 2017

Residential Tenancy Branch