



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD, OPB

Introduction

This is an application brought by the Landlord requesting a monetary order in the amount of \$2425.42.

The applicant testified that the respondent was served with notice of the hearing by registered mail that was mailed to the respondent's present address on August 16, 2016; however the respondent 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 has been properly served with notice of the hearing, and I conducted the hearing in the respondent's absence.

The landlord's testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The applicant testified that he had originally filed a claim on the same matters on September 1, 2015, and the hearing was held on March 7, 2015.

The applicant further stated that the arbitrator in that hearing found in favor of the landlord, and issued a decision and order on March 11, 2016,(a copy of that decision has been inserted in bold/italics below):

DECISION

Dispute Codes **FF MND MNDC MNR**

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The landlord also requested recovery of the filing fee for this application. The landlord attended the hearing but the tenant failed to attend. The landlord testified that the tenant was served with the Application for Dispute Resolution and Notice of Hearing in person by a process server on September 4, 2015. The landlord submitted the affidavit of service of the process server. I am satisfied that the tenant was properly served with the hearing documents.

Issue(s) to be Decided

Is the landlord entitled to the requested orders?

Background and Evidence

This tenancy began on October 21, 2014. The rent was \$1750.00 due in advance on the first day of each month. The tenant paid a security deposit of \$875.00 at the start of the tenancy. On August 31, 2015 the tenant vacated the rental unit. The tenant had only paid half the rent for August and had told the landlord to use his security deposit as the other half of the rent for August.

At the outset of the tenancy a move-in condition inspection report was completed. The report reflected the fact that the condominium was brand new and had not yet been lived in by anyone. At the time of move-out, the tenant repeatedly changed times for the move out inspection and then ultimately never showed. The tenant also refused to deliver the keys to the rental unit to the landlord and said that the landlord would have to drive all the way out to the tenant's new place in Surrey to get the keys from him. The landlord agreed to do this because he needed to get into the unit to get

it ready for the next tenants who were moving in the next day. When the landlord ultimately got access to the unit he found it to be in terrible condition. He gave this description in his application:

“The suite was found to be smelly, dirty and damaged upon entry. It was almost unbearable and many items were left behind including mattress, personal belongings, food, drinks and garbage. Major concerns/discoveries: 1) burnt mark on cupboard in kitchen; 2) greasy sink, oven, over-the-range microwave, and fridge including interior surfaces; 3) stained carpet with dust and hair in bedroom and closets; 4) stained toilet and toilet seat, shower cabin, bath tub, and sinks; 5) dented and scratched walls with smudged dirt; 6) damaged flooring in living room. The suite was in such bad condition that it could not be thoroughly cleaned just once and in one day.”

The landlord submitted detailed photographic evidence of the rental unit in support of the above description. The landlord testified that the suite could not be ready in time for his new tenants so he had to give them a rebate of two days’ rent.

For his part, the tenant did not submit any evidence and as noted above, did not attend the hearing.

Analysis

The landlord has made a total monetary claim of \$2425.00 for the following items:

<i>Unpaid rent – Jun 2015</i>	<i>\$200.00</i>
<i>Unpaid rent - Aug 2015</i>	<i>875.00</i>
<i>Mileage and toll to Surrey (to get keys)</i>	<i>33.80</i>
<i>Cleaning supplies</i>	<i>8.68</i>
<i>Lock replacement (tenant returned only one of two sets of keys)</i>	<i>166.20</i>
<i>Junk and garbage removal</i>	<i>200.00</i>
<i>First Move-out cleaning</i>	<i>320.00</i>
<i>Second Move-out cleaning</i>	<i>186.90</i>
<i>Carpet Cleaning</i>	<i>136.50</i>

Process server	131.67
Lost rental (2 day rebate to new tenants)	116.67
Filing fee	50.00
TOTAL	\$2425.42

In support of the above claims, the landlord submitted photographs, inspection reports, invoices and receipts. The landlord's evidence package was extremely organized and clear and provided more than enough support in my view to establish his entire claim. The rental unit was left in deplorable condition and I am only surprised that the landlord's claim was not higher than it was. In point of fact, the landlord testified that the claim would have been higher had he had enough time to repair the damage that was done to the unit. However, in order to get the next tenants in, the landlord had to restrict himself to the immediate tasks of furniture and garbage removal and clean up.

I find that the landlord has established his entire monetary claim.

Conclusion

I find that the landlord has established a total monetary claim of \$2425.42 for the items listed above. I order that the landlord retain the deposit and interest (\$0.00) of \$875.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1550.42. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 11, 2016

The applicant further stated that when he attempted to enforce the order in the court the court refused to enforce the order as he had inadvertently reversed the respondent's first name with his last name.

The applicant therefore stated that he has applied again for the same amount of money, and is requesting that a new order be issued, stating that nothing has changed since the

first application, and the amounts and costs are exactly the same, he is therefore just requesting that a decision and order be issued with the correct name for the respondent.

Analysis

I have reviewed all the evidence presented by the applicant for today's hearing and it is my decision that I have come to the same conclusion as the original arbitrator.

The applicant has provided ample evidence to show that rent is outstanding totaling \$1075.00.

The applicant has also provided sufficient evidence to show that the rental unit required significant cleaning and carpet cleaning.

The applicant has provided evidence to show that the tenant refused to return keys and therefore he had to travel to the tenant's new address to recover the keys.

The applicant has provided sufficient evidence to show that the tenant was avoiding service and therefore the services of a process server were required.

The applicant has also provided sufficient evidence to show that the cleaning required a full two days, and therefore the landlord lost the rental revenue for those days.

It is my decision therefore that I will allow the same amounts as were allowed in the original decision as follows,(the only difference being that the filing fee this time is \$100.00, increasing the total amount by \$50.00):

Unpaid rent – Jun 2015	\$200.00
Unpaid rent - Aug 2015	875.00
Mileage and toll to Surrey (to get keys)	33.80
Cleaning supplies	8.68
Lock replacement (tenant returned only one of two sets of keys)	166.20
Junk and garbage removal	200.00
First Move-out cleaning	320.00
Second Move-out cleaning	186.90
Carpet Cleaning	136.50
Process server	131.67

Lost rental (2 day rebate to new tenants)	116.67
Filing fee	\$100.00
TOTAL	\$2475.42

Conclusion

Pursuant to section 67 of the Residential Tenancy Act, I have allowed the landlords full claim of \$2475.42, and I therefore order that the landlord may retain the full security deposit of \$875.00, and I have issued a monetary order for the respondent to pay \$1600.42 to the applicant.

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 21, 2017

Residential Tenancy Branch

