



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to a Landlords' Application for Dispute Resolution (the "Application") filed on August 12, 2016 for: a Monetary Order for damage to the rental unit; to keep the Tenants' security and pet damage deposits; and to recover the filing fee from the Tenants.

The female Landlord appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. There was no appearance by the Tenants during the 30 minute hearing or any submission of evidence from them prior to the hearing. Therefore, I turned my mind to the service of documents for this hearing by the Landlords.

The Landlord testified that she served a copy of the Application and the Hearing package by registered mail to each Tenant on August 17, 2016. The Landlord provided the Canada Post tracking numbers into oral evidence which are noted on the front page of this Decision. The Canada Post website shows that both packages were received and signed for by the female Tenant on August 19, 2016.

Based on the foregoing evidence, I find the Landlords served the required documents to the Tenants for this hearing pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The hearing continued with the undisputed evidence of the Landlords as follows.

Issue(s) to be Decided

- Are the Landlords entitled to costs associated with damage to the rental unit?
- Are the Landlords entitled to keep the Tenants' security and pet damage deposits in partial satisfaction of the monetary claim for damage to the rental unit?

Background and Evidence

The Landlord testified that this tenancy started on August 1, 2015 for a fixed term of one year which was scheduled to end on July 31, 2016, at which point the Tenants were required to move out of the rental unit which they did.

Rent under the written tenancy agreement was \$1,050.00 payable on the first day of each month. The Tenants paid a security deposit of \$525.00 and a pet damage deposit of \$75.00 on June 1, 2015, which the Landlords still retain. These are herein referred to as the "Deposits" in this Decision.

The Landlord testified that she completed a move-in Condition Inspection Report (the "CIR") with the Tenants on July 31, 2015 and a move-out CIR with the Tenants on July 31, 2016. The CIR was provided into evidence and shows the Tenants' forwarding address. The CIR shows the Tenants consented to the Landlords keeping the Deposits.

When the Landlord was asked about this she explained that the consent was contingent on her providing invoices to the Tenants for their final confirmation of the agreed deduction. In this respect, I informed the Landlord that this section of the CIR is reserved for express authority by tenants consenting to deductions. The Landlord explained that when the Tenants were presented with the invoice evidence they withdrew this consent and therefore she filed the Application on August 12, 2016.

The Landlord testified that the Tenants had caused multiple holes in the wall throughout the rental unit which they had then filled in with filler which had not been sanded down and painted over. The Landlord referred to her photographic evidence and the CIR to demonstrate the extent of the damage caused. The Landlord provided a painting invoice in the amount of \$925.96 for having to have the damaged walls repainted. This amount included the supply of the paint and the labor cost.

The Landlord testified that at the end of the tenancy the Tenants had the carpets cleaned with a strong stringent cleaner which served to mask the smell of pet urine in the rental unit not evident on the day the move-out CIR was completed. There was also some purple staining present on the carpet which was recorded on the move-out CIR and evidence by photographs.

The Landlord testified that on August 1, 2016 when the new renters moved in and she attended to do a move-in condition inspection, the renters and the Landlord noticed a strong smell of pet urine which was unbearable to live in. As a result, the Landlord hired

a fan to get rid of the smell and asked a professional carpet cleaning company to attend the rental unit to examine the problem.

The Landlord provided an estimate from this company who confirmed that the underlay of the carpet had been exposed to pet urine and had to be replaced. The Landlord testified that she mitigated the high cost the professional cleaning company had quoted and employed a second company to clean the carpet and install new underlay at half of the cost.

As a result, the Landlords now claim: \$285.60 for carpet cleaning and urine treatment; \$33.60 for the purchase of new underlay; \$20.16 for the fan hire; and \$7.36 for duct tape to fix the underlay down. The Landlords provided invoices for these costs.

The Landlord was informed during the hearing that the Act does not allow awards for printing costs as these costs must be borne by each party as preparation for dispute resolution. The Landlord also withdrew her claim for administration costs, yard clean up, and dump fees totaling \$185.00. The Landlord confirmed during the hearing that the total calculation she had performed as broken down on the Monetary Order Worksheet was incorrect and the total amount the Landlords were seeking to claim was \$1,272.68.

Analysis

In relation to the timing of the Landlords' Application for the Tenants' security deposit, I accept the Landlords' evidence that the Tenants provided their forwarding address at the end of the tenancy on July 31, 2016. As a result, I find the Landlords made the Application to keep the Tenants' security deposit within the 15 day time limit stipulated by Section 38(1) of the Act.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end of the tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* explains that a CIR can be used as evidence of the state of repair and condition of the rental suite unless there is a preponderance of evidence provided by the parties to suggest otherwise.

Taking into consideration the undisputed evidence before me comprising of: oral testimony; photographic evidence; the CIR; and the invoices to support the costs being claimed, I am satisfied that the Tenants failed to comply with Section 37(2) of the Act. As a result, the Landlords are awarded the full costs claimed above. As the Landlords had to file the Application and were successful on a significant portion of it, I also award the Landlords the \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the

Landlords are granted a total award of **\$1,372.68** (\$925.96 + \$285.60 + \$33.60 + \$20.16 + \$7.36 + \$100.00).

As the Landlords already hold \$600.00 in the Tenants' Deposits, I order the Landlords to retain this amount in partial satisfaction of the total amount awarded pursuant to Section 72(2) (b) of the Act.

The Landlords are issued with a Monetary Order for the remaining balance of \$772.68. This Order must be served on the Tenants and may then be filed and enforced in the Small Claims Division of the Provincial Court as an order of that court if the Tenants fail to make payment. Copies of the order are attached to the Landlords' copy of this Decision.

Conclusion

The Tenants failed to leave the rental unit undamaged. The Landlords may keep the Tenants' Deposits and are issued with a Monetary Order for the remaining balance of \$772.68. 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 15, 2017

Residential Tenancy Branch