



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 September 9, 2016 for: a Monetary Order for damage to the rental unit; to keep a portion of the Tenants' security deposit; and to recover the filing fee from the Tenants.

Both Landlords appeared for the hearing but only the male Landlord provided affirmed testimony. The Landlords also provided documentary and photographic evidence prior to the hearing. There was no appearance by the Tenant during the 20 minute hearing.

The Landlords testified they served a copy of the Hearing package and their evidence by registered mail on September 12, 2016 to the correspondence address the Tenant provided at the end of the tenancy. The Landlord provided the Canada Post tracking number into evidence to verify this method of service. The Landlord testified that he received an email from the Tenant's mother confirming receipt of the Hearing Package.

I noted that the Tenant provided two pages of written submissions and unclear black and white photographs which had been faxed to the Residential Tenancy Branch two days prior to this hearing. That evidence also indicated the Tenant had provided a USB with that evidence; however, the USB was not before me at the time of the hearing. The Landlords were asked whether they had received this evidence. The Landlords confirmed receipt of it also two days prior to this hearing and confirmed that they were unable to view or comment on the evidence because the black and white photographs were not clear.

The Tenant failed to appear for this hearing in order to provide oral evidence and present/explain the late evidence she had submitted. I also noted the Tenant's evidence was served and submitted late contrary to the time limits set by the Dispute Resolution Rules of Procedure; these time limits are designed to ensure that evidence is exchanged and is made available in a timely fashion to avoid such regarding service of

evidence. The photographs before me were also not clear as they were faxed in black and white form. Considering the Tenant had from September 2016 to provide this evidence and make arrangements to make herself available for this hearing, I declined to consider the Tenant's evidence as this would be prejudicial to the Landlords.

Based on the undisputed evidence before me and the fact that the Tenant had submitted evidence for this hearing, this indicates the Tenant was aware of these proceedings. Therefore, I accept the Landlords served the required documents to the Tenant 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.

Issue(s) to be Decided

- Are the Landlords entitled to costs associated with damage to the rental unit and a failure to return the keys?
- Are the Landlords entitled to keep the Tenants' remaining security deposit in full satisfaction of the monetary claim filed?

Background and Evidence

The Landlord testified that this tenancy started on January 21, 2016 for a fixed term of six months which was scheduled to end on August 31, 2016, at which point the Tenant was required to move out of the rental unit which she did. Rent under the written tenancy agreement was \$3,800.00 payable on the first day of each month. The Tenant paid a security deposit of \$1,900.00 at the start of the tenancy. The Landlord testified that he returned \$1,332.08 from the Tenant's security deposit within the 15 day time limit using the Tenant's address that was provided to them. The Landlords then applied to keep the remaining \$567.92 by filing the Application on September 9, 2016.

The Landlord testified that a move-in Condition Inspection Report (the "CIR") was completed with the Tenant on January 21, 2016. After the inspection was completed, the Tenant noted on the move-in CIR that the condition of the rental unit was all in "all good order". The Tenant signed the move-in portion of the CIR.

The Landlord testified that they met with the Tenant on August 31, 2016 to complete the move-out CIR at which point the Tenant became verbally abusive about the lack of cleaning that was being pointed out by the Landlords. As a result, the police had to be called and the inspection had to be abandoned as the Tenant was asked to leave the rental unit. The Landlords then completed the move-out CIR in the absence of the Tenant and now provide this into evidence.

The Landlord testified that at the end of the tenancy on September 1, 2016 he was provided with a forwarding address from the Tenant by email which listed an address for the service of correspondence and an address for the return of the security deposit. The Landlord testified that he used the correspondence address to file the Application and returned the unclaimed portion of the Tenant's security deposit to the second address provided.

The Landlord testified that the Tenant failed to clean the rental unit; in particular, the floors, the fridge, the stove, and the bathrooms had not been cleaned. As a result, the Landlord hired a contractor to clean the rental unit which took several hours at a cost of \$240.00.

The Landlord testified that the Tenant also created multiple holes in the walls which all had to be filled, sanded, and painted over. The Landlord testified that instead of employing a company to undertake this repair, he mitigated loss by doing most of the work himself. As a result, the Landlords claim \$69.00 for painting supplies and \$140.00 for labor costs. The Landlord testified that the Tenant had also failed to return the keys to the rental unit at the end of the tenancy and therefore he had to purchase a new deadbolt for the rental unit at a cost of \$118.92. The failure of the Tenant to return the keys was documented on the move-out CIR.

In support of the above claims, the Landlord referred me to photographic evidence and the CIR which depicts and reflects the lack of cleaning and damage to these areas. The Landlord also provided a copy of the invoice and cheque for the cleaning cost incurred, an invoice for the cost of changing the deadbolt, and the cost for purchasing the paint.

Analysis

In relation to the timing of the Landlords' Application for the Tenant's security deposit, I accept the Landlords' evidence that the Tenant provided her forwarding address which the Landlord accepted by email on September 1, 2016 after the tenancy ended on August 31, 2016. As the Landlords filed the Application on September 9, 2016 to keep the Tenant's security deposit, I find this was done so within the 15 day time limit provided for by Section 38(1) of the Act.

Section 37(2) (a) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end 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. Section 37(2) (b) of the Act requires a tenant to

return all the keys and means of access to the residential property under their possession or control at the end of the tenancy, to the landlord.

I find the Tenant failed to provide or present a preponderance of evidence to dispute the Landlords' claim. As a result, I have considered the Landlords' undisputed evidence before me comprising of: oral testimony; photographic evidence; the CIR; and the invoices to support the costs being claimed. Accordingly, I am satisfied that the Tenant failed to comply with Section 37(2) of the Act.

As a result, I accept the Landlords' evidence that verifies the costs being claimed and award them **\$567.92** (\$69.00 + \$140.00 + \$118.92 + \$240.00). As the Landlords already hold the amount awarded in the Tenant's security deposit, pursuant to Section 72(2) (b) of the Act I order the Landlords to retain this amount in full satisfaction of the Landlords' Application.

As the Landlords have been successful with their claim, I also find they are entitled to recover the filing fee for having to make this Application. Therefore, the Landlords are issued with a Monetary Order for \$100.00. This order must be served on the Tenant and may then be filed and enforced in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment. Copies of the order are attached to the Landlords' copy of this Decision.

Conclusion

The Tenant failed to leave the rental unit undamaged and return the keys. The Landlords may keep the remainder of the Tenant's security deposit of \$567.92 they currently hold and are issued with a Monetary Order for the recovery of the filing fee. 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 22, 2017

Residential Tenancy Branch

