



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, O, MNSD, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by both landlords.

The landlords testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on January 30, 2017 by another occupant in the residential property on the landlord's behalf in accordance with Section 89.

At the outset of the hearing the landlords confirmed the tenant vacated the rental unit on or before February 14, 2017 and they no longer require an order of possession. I amend the tenant's Application for Dispute Resolution to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on July 22, 2016 for a 1 year fixed term tenancy beginning on August 1, 2016 for the monthly rent of \$500.00 due on the 1st of each month with a security deposit of \$250.00 paid. The agreement stipulated that the tenant was not to smoke or have drugs in the rental unit;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on December 17, 2016 with an effective vacancy date of January 20, 2017 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and put

the landlord's property at significant risk; the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: damage the landlord's property; adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant; and jeopardize a lawful right or interest of another occupant or the landlord; and breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlords also submitted documentary and videographic evidence of the tenant smoking marijuana on the residential property. The landlords also submitted an estimate for the costs to have the environment freed from odours related to smoking in the rental unit.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

From the landlords' undisputed testimony and evidence I accept the tenant had smoked in the rental unit and that as a result, the unit required an oxidation process to rid it of the odour from continued smoking. As such, I find the tenant failed to comply with her obligations under Section 37 of the *Act*.

Furthermore, I find the landlords have established they suffered a loss as a result of the tenant's failure to have the air cleaned and compliance with Section 37. I find the landlords have also established the value of that loss to be \$300.00.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$400.00** comprised of \$300.00 for cleaning the air in the unit and the \$100.00 fee paid by the landlords for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$250.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$150.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: February 24, 2017

Residential Tenancy Branch