



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord attended the hearing and gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord's agent testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on August 15, 2016 and was given the opportunity to send to me by facsimile proof of such service after the hearing concluded. I have received a copy of a Registered Domestic Customer Receipt addressed to the tenant and stamped by Canada Post with that date as well as a Canada Post cash register receipt bearing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for liquidated damages?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on October 1, 2015, expiring on September 30, 2016 thereafter reverting to a month-to-month tenancy. However, the tenant gave notice to the landlord on June 30, 2016 and vacated the rental unit on July 31, 2016, providing the landlord with a forwarding address in writing that day.

Rent in the amount of \$925.00 per month was payable on the 1st day of each month and there are no rental arrears. On September 11, 2015 the landlord collected a security deposit from the tenant in the amount of \$462.50 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in a complex containing about 30 units, and the landlord's agent does not reside on the rental property.

A copy of the tenancy agreement has been provided which provides for liquidated damages in the amount of \$500.00 if the tenant moves out before the end of the fixed term or breaches the tenancy agreement causing the landlord to end the tenancy prior to the end of the fixed term. The landlord claims that amount as against the tenant.

The landlord's agent further testified that a move-in condition inspection report was completed at the beginning of the tenancy and a move-out condition inspection report at the end of the tenancy, however only the move-out condition inspection report was provided for this hearing.

The landlord claims \$89.25 for carpet cleaning, \$30.00 for drapery cleaning, and \$15.00 for window cleaning. The move-out condition inspection report shows that all items listed were clean, and shows a notation at the bottom about the costs for carpet cleaning, window cleaning and drapery cleaning. It also shows that the tenant disagreed that the report fairly represents the condition of the rental unit and states: "discussed leaving one month early ... was told \$500.00 waived if rented." The landlord's agent testified that the agent who did the report did not agree to waive the liquidated damages. The rental unit was re-rented for August 1, 2016.

Analysis

I have reviewed the tenancy agreement, and I am satisfied that the landlord has established the claim of \$500.00 for liquidated damages.

I have also reviewed the move-out condition inspection report which clearly shows that the draperies, windows and carpets were fine at the end of the tenancy, showing a

checkmark beside every item listed. Therefore, I am not satisfied that the landlord has established the claims for those items.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$462.50 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference in the amount of \$137.50.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$462.50 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$137.50.

This order is final and binding and may be enforced.

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 14, 2017

Residential Tenancy Branch