



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ECM STRATA MANAGEMENT - RENTAL DIVISION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, OPC, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") for a Monetary Order for: damage to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenant's security deposit; and, to recover the filing fee from the Tenant. The Landlord also applied for an Order of Possession to end the tenancy.

An agent for the company Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenant during the 17 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified that he served the Tenant with a copy of the Application and the Hearing Package by registered mail on October 17, 2016 to the Tenant's forwarding address that was provided at the end of the tenancy by the Tenant. The Landlord provided the Canada Post tracking number into evidence to verify this method of service. The Landlord explained that the documents were returned to him as unclaimed.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the required documents on October 22, 2016 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Landlord.

The Landlord confirmed that he did not need an Order of Possession as the tenancy had ended and this was clerical mistake. Therefore, I dismissed the Landlord's Application requesting an Order of Possession.

Issue(s) to be Decided

- Is the Landlord entitled to cleaning and damages to the rental unit?
- Is the Landlord entitled to loss of rent for damages to the rental unit?
- Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

The Landlord testified this tenancy started on April 1, 2015 for a fixed term of six months which continued on a month-to-month basis thereafter. A signed tenancy agreement required the Tenant to pay rent in the amount of \$635.00 on the first day of each month, which was then increased to \$645.00 during the tenancy. The Tenant paid a security deposit of \$317.50 at the start of the tenancy which the Landlord still retains in trust.

The Landlord completed a move-in Condition Inspection Report (the "CIR") on April 1, 2015. The Landlord testified that the tenancy ended when the Tenant gave written notice on August 31, 2016 to end the tenancy for October 1, 2016. The Landlord confirmed that the Tenant provided the forwarding address on the move-out CIR. The Landlord used that address to file this Application on October 12, 2016.

The Landlord testified that at the end of the tenancy, the Tenant failed to clean the rental unit. The Landlord provided a handwritten statement from the building manager who writes that she had to clean chicken poop from the patio deck as the Tenant's son was a chicken catcher. In addition, the building manager had to pick up wood splinters from the carpet and that all the kitchen, bathroom, and kitchen appliances had to be cleaned. The building manager writes that she spent a total of 6.5 hours cleaning for \$15.00 per hour. As a result, the Landlord claims \$97.50 for cleaning costs performed by the building manager as evidenced by an invoice provided by her into evidence.

The Landlord testified that Tenant caused a considerable amount of damage to the rental unit. In particular, the Tenant damaged four bifold doors and damage to two other doors. These had to be replaced and re-installed by a company for a cost of \$678.30. The Landlord provided an invoice for this cost which detailed the work that was undertaken, including repair to a toilet seat.

The Landlord testified that the Tenant also caused a considerable amount of damage to the rental unit walls. This damage had to be filled in, sanded down, and painted over. The Landlord claims \$414.75 as evidenced by a painting invoice supplied into evidence.

The Landlord testified that the Tenant also failed to clean the carpets at the end of the tenancy. As a result, the Landlord had them cleaned for a cost of \$84.00 as evidenced by an invoice showing this cost.

The Landlord stated that due to the extensive damage caused by the Tenant to the rental unit, it could not be re-rented for the following two weeks pending the completion of the work. Therefore, the Landlord now claims loss for half month's rent in the amount of \$322.50. The Landlord pointed me to the CIR which supports the damages and cleaning presented in the hearing.

Analysis

I have considered the undisputed evidence of the Landlord and I make the following findings. I accept the Landlord's evidence that the tenancy ended on October 1, 2016 and that the Tenant provided the Landlord with the forwarding address on this date. Therefore, I find that the Landlord applied to keep the Tenant's security deposit within the 15 day time limit provided for by Section 38(1) of the Act.

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary. Policy Guideline 1 on landlord and tenant responsibilities explains that generally, at the end of a tenancy, the Tenant will be held responsible for shampooing or steam cleaning the carpets after a tenancy of one year.

Based on the foregoing evidence, I find the Landlord has provided sufficient oral and supporting evidence that the Tenant failed to comply with Section 37(2) of the Act. The Tenant failed to appear for this hearing and did not provide a preponderance of evidence to dispute the Landlord's evidence. Therefore, I find the Landlord has proved damages and lack of cleaning totaling \$1,274.55 (\$414.75 + \$97.50 + \$678.30 + 84.00).

With respect to loss of rent, Policy Guideline 3 on claims for loss of rent states, even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. Therefore, I accept the Landlord's undisputed oral evidence, coupled with the evidence supporting the lack of cleaning and damages to the rental unit, that the Landlord incurred a loss of half month's rent which is hereby awarded to the Landlord in the amount of \$322.50.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for the cost of this Application. Therefore, the total amount awarded to the Landlord is \$1,697.05 (\$1,274.55 + 322.50 + \$100.00).

As the Landlord already holds \$317.50 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of \$1,379.55 (\$1,697.05 – \$317.50).

This order must be served to the Tenant and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

Conclusion

The Landlord has proved damages, lack of cleaning, and loss of rent in this tenancy. The Landlord may keep the Tenant's security deposit and is issued a Monetary Order for the remaining balance of \$1,379.55.

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: April 12, 2017

Residential Tenancy Branch