



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant for unpaid rent and damage, authority to retain the Tenant's security deposit and to recover the filing fee.

The hearing was conducted by teleconference on May 2, 2017. Only the Landlord's representatives called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

T.C. testified that she served the Tenant with the Notice of Hearing and the Application on November 23, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Canada Post Tracking service confirms the Tenant signed for the package on November 24, 2016.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of November 28, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which provided that this one year fixed term tenancy began July 1, 2016. The agreement also noted that the monthly rent of \$1,275.00 was reduced by \$276.00 to \$999.00 as a rent incentive pursuant to clause 44 of the Agreement (such funds to be repayable in the event the Tenant broke the lease). The agreement also noted that the Tenant paid a security deposit in the amount of \$299.00.

T.C. testified that the Tenant moved out of the rental unit on November 2, 2016, such that they were not able to rent the unit for November 2016. T.C. confirmed that the Landlord also sought recovery of the rent incentive pursuant to clause 44 as the Tenant vacated the rental prior to the end of the fixed term.

Clause 10 of the Agreement provides authorization for the Landlord to charge a \$25.00 late fee. Clause 45 of the Agreement also provides the Landlord authorization to charge a \$25.00 admin fee.

Clause 5 of the tenancy agreement also provided that the Landlord would be entitled to liquidated damages in the amount of \$637.50 in the event the Tenant ended the tenancy prior to the expiration of the fixed term.

The Landlord filed a Monetary Orders worksheet wherein the Landlord indicated they sought \$4,006.25 for the following:

Partial October 2016 rent	\$4.00
November 2016 rent	\$999.00
Late fee for November 2016	\$25.00
5 month incentive payback	\$1,380.00
Suite cleaning	\$280.00
Carpet cleaning	\$200.00
Garbage removal	\$120.00
Repair materials	\$90.00
Repair labour	\$200.00
Liquidated damages	\$637.50
Admin fee	\$25.00
GST	\$45.75
TOTAL	\$4,006.25

The Landlord also provided digital photos of the rental unit confirming it required cleaning and repair. T.C. noted that the amounts claimed above were charged “in house” at a more competitive rate than those which would be charged by third parties.

Analysis

A party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the *Act* as follows:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant

is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

After consideration of the undisputed testimony and evidence of the Landlord and on a balance of probabilities, I find the Landlord is entitled to the compensation claimed for repairs, cleaning and debris removal. The photos submitted by the Landlord confirm that the Tenant failed to clean the rental unit as required. It appears as though the Tenant made little or no effort to clean the rental when vacating; for example, the oven, refrigerator and washing machine were not wiped down, the Tenant left items and debris in the home and the yard, and the floors did not even appear to be vacuumed. These photos also show significant damage to the walls and blinds as well as damage to electrical plug covers.

I accept the Landlord's evidence that the Tenant vacated the rental unit on November 2, 2016. Pursuant to the clear terms of the tenancy agreement, I find that the Landlord is entitled to the amounts claimed for the late fee, admin fee, payback of the rent incentive, and liquidated damages. I also find the Landlord is entitled to the amounts claimed for unpaid rent for October and November 2016.

The Landlord, having been successful in their claim is also entitled to recovery of the filing fee for a total award of \$4,106.25 calculated as follows:

Partial October 2016 rent	\$4.00
November 2016 rent	\$999.00
Late fee for November 2016	\$25.00
5 month incentive payback	\$1,380.00
Suite cleaning	\$280.00
Carpet cleaning	\$200.00
Garbage removal	\$120.00
Repair materials	\$90.00
Repair labour	\$200.00
Liquidated damages	\$637.50
Admin fee	\$25.00
GST	\$45.75
Filing fee	\$100.00
TOTAL	\$4,106.25

Conclusion

I award the Landlord compensation in the amount of **\$4,106.25**. I authorize the Landlord to retain the Tenant's security deposit in the amount of \$299.00 and I grant the Landlord a Monetary Order for the balance due in the amount of **\$3,807.25**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: May 23, 2017

Residential Tenancy Branch