



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENSON REALTY
and [tenant name sup

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 1:55 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

The landlord testified that on December 14, 2016, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. And on May 1, 2017 a copy of the landlord's amended application was also sent to the tenant by registered mail. The landlord provided registered mail tracking numbers in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to a monetary award for damage to the rental unit?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The rental unit is an entire residential house. The tenancy began on December 2011 with a monthly rent of \$1850.00 payable on the 1st day of each month. The tenant paid a security deposit of \$900.00 and a pet deposit of \$900.00 at the start of the tenancy which the landlord continues to hold.

The landlord provided a monetary order worksheet in which he claims a total of \$19,478.63 comprised of the following item #'s 1-7:

#1 - \$100 filing fee

#2 - \$11.34 for postage expense of filing the application: The landlord withdrew this part of claim during the hearing.

#3 - \$550.00 for waste removal: The landlord submitted pictures of various items left behind by the tenant and an estimate for removing the waste. The landlord testified he has not yet removed the waste as he is still working on repairing the deck and will remove all the waste at once. The estimate provided by the landlord is based on a full truck load. The landlord did not submit any evidence with respect to the size of a truck load.

#4 & #5 - \$187.38 plus \$29.16 for painting basement: The landlord testified the tenant painted the basement without consent. The landlord submitted an e-mail from the tenant dated March 2, 2015 by which the tenant agreed to re-paint at the end of the tenancy. The tenant did not re-paint at the end of the tenancy and the landlord has submitted receipts for the paint supplies.

#6 & #7 - \$1800.75 plus \$16,800.00 for fixing and rebuilding deck: The landlord submits that the rental unit contained an original 12x10 deck with an enclosed storage area underneath. The deck was built with the house in 1970. In June 2015, the tenant started taking down the deck and rebuilding a new one without the landlords consent. Later, the landlord noticed the deck was extended 4 feet from original and asked the

property manager to inquire about permits. The landlord extended the lease to provide the tenant more time to complete the deck. The tenant did not obtain permits and the deck was left unfinished at the end of the tenancy. The landlord obtained a quote from a renovation company and proceeded to have the deck completed and paid the amount of \$1800.75 to complete the deck. While performing the work to complete the deck, the renovation company noticed that a supporting post next to the stairs was rotten and needed to be replaced. The landlord then had another renovation company prepare a report on the cause of the rotten post. The second renovation company submitted a report indicating the project was done without permits, incorrect material was used throughout which caused the rot damage to posts.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

My findings with respect to each of the items identified in the landlord's application are as follows:

#1 - \$100 filing fee: This item is addressed at the bottom of this section.

#2 - \$11.34 for postage expense of filing the application: The landlord withdrew this part of the claim during the hearing.

#3 - \$550.00 for waste removal: The landlord only provided an estimate for waste removal and this estimate was based on a full truck load. The landlord did not submit any evidence with respect to the size of a truck load. I find that based on the picture evidence submitted by the landlord, the amount of waste left behind would not be a full truck load. I find the landlord is entitled to one half truck load for waste removal which is estimated at **\$300.00**.

#4 & #5 - \$187.38 plus \$29.16 for painting basement: Residential Tenancy Policy Guideline 40, Useful Life of Building Elements, provides that interior paint has a useful life of 4 years. As the tenancy began in December 2011, I find the interior paint had exceeded its useful life and the landlord would have been responsible to re-paint the rental unit after a tenancy of 5 years. Further, the receipts submitted by the landlord include items such as drywall and drywall tape. The landlord did not submit any evidence of drywall damage caused by the tenant. This part of the landlord's application is dismissed.

#6 & #7 - \$1800.75 plus \$16,800.00 for fixing and rebuilding deck: Residential Tenancy Policy Guideline 40, Useful Life of Building Elements, provides that wooden decks have a useful life of 20 years. As the deck was original from 1970 it was approximately 46 years old. As such, I find the deck had well exceeded its useful life. Further, it is evident from the landlord's own evidence that even after becoming aware that the tenant had removed the old deck, the landlord permitted the tenant to continue working on the deck and not only left the responsibility to obtain permits on the tenant but also took the risk the tenant was qualified to rebuild the deck. As such, I find the landlord consented to the tenant replacing the deck and cannot now hold the tenant responsible for any short comings. This part of the landlord's application is also dismissed.

As the landlord was only marginally successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

In summary, the landlord is entitled to a monetary award in the amount of \$300.00.

The landlord continues to hold a security deposit and pet deposit in the amount of \$1800.00. I allow the landlord to retain \$300.00 in full satisfaction of the monetary award pursuant to section 38 of the Act.

I order the landlord to return the balance of the security deposit and pet deposit in the amount of \$1500.00 to the tenant.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1500.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: June 12, 2017

Residential Tenancy Branch