



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

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

- a Monetary Order for damage to the unit, site or property, pursuant to section 67 of the *Act*;
- an application to keep all or part of the security deposit, pursuant to section 72 of the *Act*; and
- a request to be reimbursed by the tenant for the filing fee, pursuant to section 72 of the *Act*.

Only the corporate landlord, who was represented by agent, J.Y. (the "landlord") participated in the conference call hearing. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on December 22, 2016 he served the tenant with his Application for Dispute Resolution and evidentiary package by way of Canada Post Registered Mail. The Canada Post tracking numbers were provided to the hearing confirming service of these documents. Pursuant to sections 88, 89 and 90 of the *Act* the tenant is deemed to have been served with the landlord's Application for Dispute Resolution and evidentiary package on December 27, 2016.

Issue(s) to be Decided

Can the landlord retain the tenant's security deposit?

Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Can the landlord recover the filing fee?

Background and Evidence

Undisputed oral testimony was provided to the hearing by the landlord that this was a fixed-term tenancy which began on January 1, 2015 and was set to end on June 30, 2015. Rent was \$2,980.00 per month and a security deposit of \$1,490.00 continues to be held by the landlord.

The landlord explained that this was a month-to-month tenancy which the tenant ended without notice at the end of May 2015. Undisputed testimony from the landlord detailed how the tenant did not inform of their intention to vacate the rental unit and abruptly vacated the home. The landlord explained that this unexpected departure made it difficult for him to re-rent the unit until July 24, 2015. The landlord explained that a large amount of damage was done to the rental unit and that because of the short notice the landlord had trouble finding a new occupant. As part of his application for a monetary award, the landlord is seeking \$1,564.50 in damages pursuant to section 9 of the tenancy agreement entered into between the parties.

A copy of this tenancy agreement was submitted to the hearing as part of the landlord's evidentiary package. It notes a cost of \$1,490.00 in damages that shall be applied to a party who breaches a fixed-term tenancy before the end of the original term. The tenancy agreement notes that this is not a penalty but is meant to cover the administration costs of re-renting the rental unit. When asked to explain the difference in price between the amount listed in the tenancy agreement and then amount sought in his Monetary Order, the landlord explained that the amount listed in the Monetary Order reflected the cost contained in section 9 of the tenancy agreement inclusive of G.S.T.

The landlord stated that a condition inspection report following the conclusion of the tenancy was performed on July 1, 2015 with the tenant. As part of the landlord's undisputed testimony, it was reported that the tenant refused to sign this report. The landlord said the tenant provided a forwarding address to him on this day. A copy of this report was submitted to the hearing as part of the landlord's evidentiary package.

The landlord explained that he suffered financial loss by having to pay for the removal of a large amount of debris that was left in the rental unit following the conclusion of the tenancy. During the hearing, the landlord highlighted numerous receipts and invoices for repair work and garbage clean up that were submitted as part of his evidentiary package. He explained that the receipts he submitted were evidence demonstrating the loss he suffered as a result of this tenancy.

Specifically, that landlord sought a Monetary Order of \$12,687.89. This amount reflects the following:

Item	Amount
Unpaid rent for June 2015	\$2,980.00
Damages as per section 9 of the tenancy agreement	1,564.50
Invoice #126 for repairs to rental unit	7,400.00
Lighting Repairs	185.89
Cleaning Services	400.00
Carpet Cleaning	157.50
Total =	\$12,687.89

The landlord provided undisputed oral testimony and photos were submitted to the hearing demonstrating the extent of damage suffered to the rental unit. The landlord explained that the rental unit was new prior to the occupation of the home by the tenant and that the tenant was the only person to have lived in it. During the hearing the landlord detailed the breadth of damage suffered, noting amongst other things that a large glass door was broken and needed to be replaced, that the walls had been drawn on by children but these marks had not been cleaned by the tenant, and that a large amount of garbage and old furniture was left in the rental unit.

Analysis

The landlord has applied for a Monetary Order of \$12,687.89 to recoup the expenses he incurred in repairing the damage done to the rental unit by the tenants. The landlord is also seeking to retain the security deposit to apply against any monetary award and to recover the filing fee.

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address on July 1, 2015, or following the conclusion of the tenancy. If the landlord had concerns arising from the damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit within this 15 day time frame.

While the landlord acknowledged that he kept the \$1,490.00 security deposit because of damage to the rental unit, no evidence was produced at the hearing that the landlord received the tenant's written authorization to retain all, or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the *Act*, nor did the landlord receive an order from an Arbitrator enabling her to do so. Undisputed testimony was however produced for the hearing by the landlord that the tenant refused to sign the condition inspection report following a joint inspection at the conclusion of the tenancy on July 1, 2015.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of \$2,980.00, representing a doubling of the tenant's security deposit that has not been returned.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove his entitlement to a claim for a monetary award.

Through a combination of undisputed oral testimony and photographic evidence, the landlord has accurately demonstrated the loss he has suffered as a result of this tenancy. I am satisfied that the damage done to the rental unit and the resulting required repairs were due to the tenant's actions. Furthermore, evidence was provided to the hearing showing the actual monetary amount of loss suffered as a result. The landlord explained that this was a brand new rental unit that had never been previously occupied. The receipts submitted to the hearing accurately documented the repairs that were required and note the expenses incurred by the landlord. I find the landlord's undisputed testimony and evidentiary package compelling and award the landlord the entire amount of money sought in his Monetary Order for repairs to the rental unit and cleaning services.

In addition to money sought for repairs and damage, the landlord is seeking a monetary award for the unpaid rent June 2015, along with liquidated damages as per section 9 of the residential tenancy agreement signed between the parties. The landlord explained, the tenant did not give adequate notice and abandoned the rental property with one month remaining on the fixed-term tenancy agreement.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect." In this case, notice was provided to the landlord a few days prior to the tenant's abandonment of the property in May 2015. The landlord testified that upon receipt of this notice he inspected the suite and determined that a large number of repairs would be required in the unit before it could be re-rented. The landlord explained that steps were immediately taken to repair the unit and it was ready for occupation in mid-July 2015. I find that the landlord has made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect*.

The landlord explained that section 9 of the tenancy agreement signed between the parties provides for the landlord to recover \$1,564.50 from the tenant to recover costs associated with a broken-fixed term tenancy. The landlord stated that due to the unexpected nature of the move and the damage done to the rental unit, efforts had to be made to find a new occupant and to repair the unit. A copy of the tenancy agreement provided to the hearing confirmed the tenant's written agreement to this clause. As I find that the tenant has violated the tenancy agreement and the landlord had to take steps to mitigate future loss, the landlord is entitled to the \$1,490.00 amount identified in section 9 of the tenancy agreement for liquidated damages. As the agreement does not specify that this amount is also to include GST, the landlord is not entitled to the recovery of the GST on the liquidated damages.

Using the off-setting provisions contained in section 72(2) of the *Act* the security, the tenant may deduct the awarded to them by the landlord's failure to act against the security deposit within the time limits allowed under the *Act* amount against the monetary award issued against them.

As the landlord was successful in this application, the landlord may recover the \$100.00 filing fee from the tenant pursuant to section 72(1) of the *Act*.

Conclusion

I issue a Monetary Order of \$9,733.39 in favour of the landlord as follows:

Item	Amount
Unpaid rent for June 2015	\$2,980.00
Liquidated Damages as per section 9 of the tenancy agreement	1,490.00
Invoice #126 for repairs to rental unit	7,400.00
Lighting Repairs	185.89
Cleaning Services	400.00
Carpet Cleaning	157.50
Return of Filing Fee	100.00
Less Return of Security Deposit x2	(-2,980.00)
Total =	\$9,733.39

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: July 10, 2017

Residential Tenancy Branch