



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BURLINGTON HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNSD, FF (Landlord's Application)
 MNSD (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenant and the Landlord. The Tenant applied on March 28, 2017 for the return of the security deposit. The Landlord applied on June 2, 2017 for an Order of Possession, to keep the Tenant's security deposit, and to recover the filing fee. As a result, both Applications were scheduled to be heard together in this hearing.

Preliminary Issues

An agent for the company Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence in advance of the hearing. However, there was no appearance for the Tenant during the 12 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the Landlord's Application and the Hearing Package.

The Landlord explained that she had served her Application, the Hearing Package, and her evidence to the Tenant by registered mail on June 8, 2017. The Landlord provided the Canada Post tracking number into oral evidence which is detailed on the front page of this Decision. The Canada Post website shows that the Tenant received and signed for the documents on June 12, 2017.

Based on the undisputed evidence before me, I find the Landlord served documents for her Application pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). As the Tenant failed to appear for the hearing to present his Application and the Landlord appeared and was ready to proceed, I dismissed the Tenant's Application without leave to re-apply.

In addition, the Landlord testified during the hearing that the Tenant had not provided a forwarding address in writing and that she only learnt of the Tenant's address when she received the Tenant's Application. A landlord cannot be put on notice of a forwarding address through the service of an Application. Therefore, even if the Tenant had appeared for this hearing and confirmed non service of her forwarding address to the Landlord, the Tenant's Application would have been premature.

During the hearing, the Landlord confirmed that the tenancy had ended and that the request for an Order of Possession was a clerical error. Accordingly, I dismissed the Landlord's Application for an Order of Possession.

Issue(s) to be Decided

Is the Landlord entitled to keep the Tenant's security deposit and recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy started on April 18, 2014 on a month to month basis. A written tenancy agreement was signed which required rent in the amount of \$575.00 payable on the first day of each month. The Tenant paid a security deposit of \$285.00 which the Landlord still retains in trust.

The Landlord testified that she completed a move-in Condition Inspection Report at the start of the tenancy. The tenancy was ended when the Landlord served the Tenant with a notice to end tenancy for cause on September 26, 2016. The Tenant accepted the notice to end tenancy but after failing to vacate the rental unit on the vacancy date of October 31, 2016 the Tenant abandoned the rental unit on November 3, 2016. The Landlord testified that the Tenant has not provided the Landlord with a forwarding address in writing.

The Landlord testified that the Tenant caused considerable damage to the rental unit and failed to clean it before he left. The Landlord provided photographic evidence indicating some of these damages and submitted two invoices. One invoice is for \$4,161.30 which reflects: painting; new carpet installation; repairing of walls, replacement of a bath tub, repair of kitchen cupboards, and removal of garbage.

The second invoice is for cleaning in the amount of \$387.50; this invoice provides extensive detail regarding the cleaning that was undertaken at the rental unit.

The Landlord testified that she only seeks in her Application to keep the Tenant's security deposit of \$285.00 and recover the filing fee, as opposed to seeking the full amount for the cleaning and damages caused by the Tenant.

Analysis

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. I have considered the undisputed evidence of the Landlord and I accept the Tenant failed to comply with the Section 37(2) of the Act. I am convinced by the Landlord's evidence in the form of photographs and invoices from independent parties detailing the extensive damage caused by the Tenant. The Tenant failed to appear for this hearing and did not provide a preponderance of evidence to dispute the Landlord's evidence, which I find is compelling in nature.

While the Landlord would have been eligible for the full amount of costs incurred, I grant the Landlord's request to just retain the Tenant's security deposit of \$285.00 in full satisfaction of the costs incurred. As the Tenant failed to appear for this hearing and the Landlord was successful in her Application, I grant the Landlord a Monetary Order for the recovery of the \$100.00 filing fee which is attached to the Landlord's copy of this Decision. The Landlord may enforce this order through the Small Claims Division of the Provincial Court if the Tenant fails to make payment.

Conclusion

The Tenant failed to appear for this hearing and breached the Act by failing to clean the rental unit and leave it undamaged. Therefore, the Tenant's Application is dismissed without leave to re-apply and the Landlord's request to keep the Tenant's security deposit is granted. The Landlord is issued with a Monetary Order to recover the filing fee. 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: August 24, 2017

Residential Tenancy Branch