



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, 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 the Landlord and the Tenant which were scheduled to be heard together in this hearing.

The Landlord applied on April 3, 2017 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; and to recover the filing fee from the Tenant. The Tenant applied on April 4, 2017 for the return of her security deposit.

Preliminary Issues

The Landlord appeared for the hearing and provided affirmed testimony and was also assisted by her friend during the hearing. However, there was no appearance by the Tenant during the 30 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord for this hearing.

The Landlord testified that she served a copy of the Application, the Hearing Package, and her documentary and photographic evidence to the Tenant by registered mail. The Landlord testified that she sent the documents to the Tenant's forwarding address which the Tenant provided at the end of the tenancy. The Landlord also explained that she did not receive or was even aware of any Application filed by the Tenant.

While the Landlord was unable to provide the Canada Post tracking number to verify service by this method, I accept the Landlord's oral evidence as the Tenant's

Application was also scheduled to be heard in this same hearing and therefore the Tenant would have known about these proceedings taking place.

Based on the foregoing, I find the Landlord effected service on the Tenant pursuant to Section 89(1) (c) of the Act. I also find that as the Tenant failed to appear for the hearing and present the merits of her Application, including evidence it was served to the Landlord which was lacking, I dismiss the Tenant's Application without leave to re-apply.

During the hearing, the Landlord also requested to keep the Tenant's security deposit in partial satisfaction of her claim, stating that she had made a clerical error on her Application in not electing to deal with this issue. I saw no reason not to amend the Landlord's Application to keep the Tenant's security deposit which I accordingly did pursuant to my authority under Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to damages to the rental unit?
- Is the Landlord entitled to loss incurred by the Landlord from the incoming renter?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord testified that this tenancy started on September 15, 2017 for a fixed term tenancy which ended on September 30, 2016. After this time, the tenancy continued on a month to month basis thereafter. The Tenant was required to pay rent of \$2,100.00 on the first day of each month. At the start of the tenancy, the Tenant paid \$1,050.00 as a security deposit, which the Landlord still holds in trust.

The Landlord testified that the tenancy ended on March 15, 2017 and a move in Condition Inspection Report was completed with the Tenant on March 21, 2017 which the Tenant failed to sign. The Landlord explained that it was during this time that the Tenant provided her forwarding address in writing to her.

The Landlord testified that during the tenancy, the Tenant had caused a significant amount of damage to the kitchen cupboards including scratches, dents, and extensive chips in the wood. The Landlord provided photographic evidence to verify this damage. The Landlord also provided an email estimate from a restoration company for the amount of \$1,360.00 to remediate the damage.

The Landlord testified that the Tenant failed to clean the rental unit at the end of the tenancy. The Landlord referred to the move-in Condition Inspection Report as well as several photographs which detail all the lack of cleaning done by the Tenant at the end of the tenancy. The Landlord claims \$350.00 for cleaning costs but failed to provide any evidence to verify the cost of this portion of the claim.

The Landlord testified that as the Tenant had caused extensive damage to the rental unit, this delayed possession of the rental unit by the new renter. The Landlord was asked to explain this claim further after which she pointed out that the new renters, who were elderly, had moved in slowly to the rental unit but they had not received full use of the rental unit because the kitchen cabinets took a while to restore. The Landlord claims approximately \$1,000.00 in relief for this portion of the claim.

Analysis

I have carefully reviewed the undisputed evidence of the Landlord on the balance of probabilities as follows. Firstly, I find the Landlord filed her Application within the 15 day time limit provided for by Section 38(1) of the Act after the Landlord was provided with the Tenant's forwarding address in writing on March 21, 2017.

Section 37(2) (a) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. The Tenant failed to appear for this hearing and failed to provide a preponderance of evidence to rebut the Landlord's evidence. I am satisfied by the Landlord's evidence that the Tenant caused the extensive damage to the kitchen cabinets as presented by the Landlord. Therefore, I award the Landlord **\$1,360.00** as verified by the estimate for the remediation cost of this damage.

I also accept that the Tenant failed to clean the rental unit at the end of the tenancy as required by the Act. However, as the Landlord failed to provide any invoice or cost evidence to support a claim of \$350.00 for this portion, I am only prepared to award the Landlord **\$150.00** for cleaning costs. I determined this amount based on the photographic evidence provided by the Landlord showing the lack of cleaning which I find is more reflective and consistent with the award that I have allowed.

I deny the Landlord's claim for \$1,000.00 for relief associated with the incoming renter. This is because: (a) the Landlord has failed to satisfy me why the kitchen cupboards could not have been repaired in the two week period before the incoming renter took occupancy of the rental unit; (b) the Landlord failed to show how the damage to the

kitchen cupboards prevented the incoming renters from taking occupancy of the rental unit; and (c) the Landlord failed to verify the loss being claimed, such as a reduction in rent provided to the incoming renter. Therefore, this portion of the Landlord's claim is unproven and hereby dismissed.

As the Landlord has been successful in a significant portion of the monetary claim, pursuant to Section 72(1) of the Act, 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 **\$1,610.00**.

As the Landlord already holds \$1,050.00 in the Tenant's security deposit, pursuant to Section 72(2) (b) of the Act, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$560.00**. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced 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. Copies of the Monetary Order are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant failed to appear for the hearing or prove service of her Application to the Landlord. Therefore, the Tenant's Application is dismissed without leave to re-apply. The Landlord proved damages to the rental unit caused by the Tenant. As a result, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the outstanding balance of \$560.00. 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 30, 2017

Residential Tenancy Branch