



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with the landlord’s application for compensation for loss or damage to the rental unit, for authorization to retain the security or pet deposit, and for recovery of the application filing fee.

The tenant did not attend the hearing. The landlord attended and was given a full opportunity to be heard, to present documentary evidence and to make submissions.

As the tenant did not attend the hearing, service of the landlord’s application and the notice of hearing were considered. The landlord provided affirmed testimony that she served the tenant with these materials and her evidence by registered mail sent March 24, 2017, to the forwarding address provided by the tenant. I accept that the tenant has been served in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord authorized to retain the security deposit?

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

Background and Evidence

The landlord’s testimony was undisputed as the tenant did not attend.

There was no written tenancy agreement in evidence and the landlord could not locate her copy at the time of the hearing. The landlord testified that the tenancy began in or

about September of 2015. It was a month to month tenancy with a rent of \$875.00 due on the first of each month. A security deposit of \$437.50 was paid at the beginning of the tenancy and remains in the landlord's possession.

The landlord testified that the tenancy agreement included an addendum setting out the cleaning required at the end of a tenancy, and stating that the tenant would be charged \$25.00/hour for any cleaning not completed by the tenant. She further testified that the agreement required the tenants to do regular lawn maintenance.

The landlord said that the tenancy ended on or about September 15, 2016. The landlord testified that when she arrived to do the condition inspection report the tenants were just leaving. They told her that they did not have time to clean, and departed in their vehicle. The landlord said that a condition inspection report was completed at move-in but she had not submitted that report in evidence.

The landlord recalled that she had received the tenant's forwarding address in writing on the same date that the tenant vacated.

The landlord itemized the cleaning that was required, including substantial cleaning of all rooms and all kitchen appliances, curtain and drapes, washing of walls dirtied by cats, corresponding touch up painting, yard maintenance, pressure washing, garbage removal, She also provided some photographs. She also provided receipts for the work done, totalling \$1,075.00.

The tenant applied earlier for recovery of the security deposit and that application was heard in April of 2017. The tenant did not attend at the hearing of his own application and the application was therefore dismissed without leave to reapply. The file number for that application is reproduced on the cover page of this decision.

Analysis

Section 38(1) of the Act requires the landlord to apply to retain the security deposit within 15 days of the date of the end of the tenancy or receipt of the tenant's forwarding address. Section 38(6) requires that the landlord pay the tenant double to the security deposit if the landlord does not do so.

Section 38(2) provides that the s. 38(1) does not apply if the tenant's right to return of the deposit has been extinguished by his failure to participate in the end of tenancy inspection. However, before the tenant's right to apply has been extinguished by his

failure to participate, the landlord must first give the tenant two opportunities to participate, and the second must be in the prescribed form. The landlord did not do this.

Nor did the landlord apply to retain the security deposit within 15 days of the end of tenancy, which, according to the landlord's testimony, was also the date the tenancy ended. Accordingly, the landlord has breached s. 38 of the Act.

The security deposit is held in trust for the tenant by the landlord, who may not keep it without establishing the right to do so or obtaining the tenant's agreement. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, that the landlord pay the tenant the total sum of \$875.00 (double the security deposit).

Sections 7 and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The landlord provided undisputed evidence that the failed to clean the rental unit upon vacating, and that the tenant had not cleaned or maintained the yard before leaving. The landlord also provided evidence of the costs associated with the tenant's failure to leave the rental unit property in proper condition. I accept the landlord's undisputed evidence in this regard and award her \$1,075.00.

As the landlord was successful in in part, and as the tenant has failed to attend, I find that the landlord is also entitled to recover the \$100.00 filing fee.

The tenant owes the landlord \$1,175.00 (\$1,075.00 in cleaning and repairs to the rental unit and the \$100.00 filing fee). The landlord owes the tenant \$875.00. Offsetting these amounts against each other I order the tenant to pay the landlord **\$300.00**.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$300.00**. The tenant must be served with this order as soon as possible. Should the tenant fail to comply

with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is reminded of the landlord's obligations around condition inspection reports at move-in and move-out, and around security deposits, as summarized above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act and is final and binding pursuant to s. 77 unless otherwise indicated in the Act.

Dated: August 25, 2017

Residential Tenancy Branch