



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord testified that the tenant was served with the Hearing Package, which included a Notice of a Dispute Resolution Hearing scheduling the hearing for 1:00 p.m. this date, by registered mail on May 12, 2017. The landlord was given the opportunity to provide proof of such service after the hearing concluded. I have now received a Registered Domestic Customer Receipt and Canada Post cash register receipt bearing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for key replacement?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on November 25, 2016, but is not sure when the tenant actually moved out. Rent in the amount of \$560.00 per month was payable under the tenancy agreement on the “18th – 20th” of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$280.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a room within a home also occupied by 3 other tenants. The landlord does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that a move-in condition inspection report was completed by the parties at the beginning of the tenancy and the parties signed the report. The landlord had served the tenant with a notice to end the tenancy effective May 1, 2017 and the tenant departed sometime after that. The landlord attempted to participate in a move-out condition inspection with the tenant, and left a note for the tenant scheduling it, but the tenant didn't show up. The landlord offered several opportunities and served the tenant with a Final Opportunity to Schedule a Condition Inspection, copies of which have been provided. The landlord completed the move-out condition inspection report in the absence of the tenant, and copies of both reports have been provided as evidence for this hearing.

The landlord has not received the tenant's forwarding address in writing other than a text message from the tenant's girlfriend.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$52.42 for re-keying the front and back door;
- \$11.20 for post office keys;
- \$630.00 for repairs to walls, ceiling, floor, drywall, carpet and cleaning;
- \$21.25 for dump fees;
- \$116.99 for painting and supplies; and
- \$86.04 for paint and supplies.

The landlord's total claim is \$917.90.

The tenant refused to return the keys to the rental unit or for the post office box. Receipts for their replacement have been provided as evidence for this hearing.

The tenant damaged a door of another tenant, and the repairs claimed by the landlord were for the tenant's room alone and the additional door that he damaged. A copy of an estimate has been provided, which includes: “cleaning walls, Hoes (#6 door fixed), wall touch-up, paint all walls& ceiling, Door #5 re-paint, rug cleaned, labor for all work, all

materials included in the price.” The landlord testified that although the estimate includes paint and supplies, but the paint didn’t cover nicotine stains so the landlord had to buy a special kind of paint but had some on-hand and has provided a receipt dated February 1, 2017 for \$116.99. The landlord does not recall why an additional \$86.04 was required for paint and supplies. Photographs of damages have also been provided, which the landlord testified were taken on May 2, 2017.

The tenant also left a massive pile of garbage in the driveway and rental unit, and the landlord has provided a copy of landfill receipts to substantiate the amount of the claim for dump fees.

Analysis

Where a party makes a monetary claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party’s failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

In this case, I am satisfied that the landlord has given the tenant ample opportunity as required by the *Act* and the regulations to participate in the move-out condition inspection report. The *Act* also specifies that the report is evidence of the condition of the rental unit at the beginning and end of the tenancy. I have considered the landlord’s testimony and have reviewed the condition inspection reports and I find that the landlord has established the claims of:

- \$52.42 for re-keying the front and back door;
- \$11.20 for post office keys;
- \$630.00 for repairs to walls, ceiling, floor, drywall, carpet and cleaning; and
- \$21.25 for dump fees.

The landlord testified that although the estimate includes supplies, the landlord had to purchase a special kind of paint to cover nicotine stains and smell, but purchased the product before the tenancy ended. I am not satisfied that the landlord has established that the tenant ought to pay for paint previously purchased by the landlord and I deny the \$116.99 claim.

The landlord was not able to specify what the additional claim for paint and supplies was for and therefore, I dismiss the \$86.04 claim for paint and supplies.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$280.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$534.87. ($\$52.42 + \$11.20 + \$630.00 + \$21.25 + \$100.00 = \$814.87 - \$280.00 = \534.87)

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$280.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$534.87.

This order is final and binding and may be enforced.

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: October 11, 2017

Residential Tenancy Branch