



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on March 6, 2017 for an Order of Possession to end the tenancy. The Landlord also applied for a Monetary Order for: damage to the rental unit; to keep the Tenant’s security deposit; and to recover the filing fee from the Tenant.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. There was no appearance by the Tenant during the 16 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord to the Tenant for this hearing.

The Landlord testified that she served a copy of the Application and the Hearing Package to the Tenant personally at the Tenant’s forwarding address within three days of getting the documents from the Residential Tenancy Branch on March 9, 2017.

Based on the undisputed evidence of the Landlord, I find the Tenant was served with the required documents for this hearing by personal service pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the “Act”). As a result, the hearing continued in the absence of the Tenant and the Landlord’s testimony and evidence was carefully considered in this Decision.

The Landlord confirmed that the Tenant had moved out of the rental unit and her Application for an Order of Possession was a clerical error and not required. Therefore, the Landlord’s request for an Order of Possession was dismissed and the hearing continued to determine the Landlord’s monetary claim as follows.

Issue(s) to be Decided

- Is the Landlord entitled to damages to the rental unit?
- Is the Landlord able to keep the Tenant's security deposit in partial satisfaction of the monetary claim for damages to the rental unit?
- Is the Landlord entitled to recovery the filing fee?

Background and Evidence

The Landlord testified that this tenancy started on March 1, 2016 on a month-to-month basis. A written tenancy agreement was signed which required rent be paid in the amount of \$720.00 on the first day of each month. The Tenant paid a security deposit of \$360.00 at the start of the tenancy which the Landlord still retains in trust.

The parties completed a move-in Condition Inspection Report (the "CIR") on March 5, 2016. The Landlord explained that the tenancy was ended when Tenant was served with a notice to end tenancy for the Landlord's use of the property effective for March 1, 2017. However, pursuant to the remedy under the notice to end tenancy, the Tenant served the Landlord with written notice to vacate the rental unit earlier, namely on January 15, 2017.

The parties both attended a move-out condition inspection of the rental unit on January 15, 2017, during which time the Landlord detailed damages and lack of cleaning to the rental unit on the move-out CIR. The Landlord testified that the Tenant failed to sign the move-out CIR because she claimed the damages being highlighted were present at the start of the tenancy.

The Landlord provided a statement from her witness who was present during the move-out condition inspection which verified that the Tenant refused to sign the move-out CIR even though it was pointed out that the move-in CIR did not detail the damages the Tenant was claiming to be present at the beginning of the tenancy.

The Landlord testified that the Tenant provided her with a forwarding address contained in a letter dated February 28, 2017. This was the address the Landlord visited when the Tenant was personally served with notification of this hearing.

As a result, the Landlord provided evidence and testified to the following amounts from the Tenant as reflected by the Landlord's Monetary Order Worksheet document.

\$463.20	Replacement of the bedroom carpet due to burn marks
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\$141.84	Replacement of the toilet which was never cleaned and was damaged indefinitely
\$133.77	Materials purchased to repair holes in bedroom walls and doors and re-painting
\$26.62	Materials purchased to repair popcorn ceiling going upstairs
\$85.39	Paint purchased for doors after holes were fixed
\$49.09	Paint purchased to paint over graffiti in basement walls
\$891.63	Purchase of underlay and flooring due to burn marks on living room carpets
\$91.58	Purchase of materials for painting living room ceiling
\$141.36	Purchase of paint and cleaning materials to clean the rental unit
\$5.56	Materials purchased to repair a drawer
\$2,030.04	Total amount claimed

The Landlord testified she was only claiming for the purchase of materials to remedy the damages caused and not claiming for the labor costs involved in doing the repair work. This was undertaken by the Landlord's friends and family members.

The Landlord referenced the move-in and move-out CIR throughout her testimony as well as pointing me to her extensive photographic evidence to verify the damages being claimed from the Tenant. The Landlord voluntarily withdrew her claim of \$303.60 for the bathroom floor as she did not have any involve evidence to back up this claim.

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. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the

I have considered the undisputed evidence of the Landlords and I make the following findings. The Act requires a tenant to provide the landlord with a forwarding address in writing within one year after the tenancy ended. I accept the Landlord's evidence that the tenancy ended on January 15, 2017 and the Tenant provided the Landlord with her forwarding address on February 28, 2017, being within one year of the tenancy ending. Accordingly, I find the Landlord applied to keep the Tenant's security deposit within 15 days of being provided with a forwarding address in writing in accordance with Section 38(1) of the Act.

In relation to the Landlord's monetary claim for damages to the rental unit, I find the Landlord has provided sufficient evidence that the Tenant failed to comply with Section

37(2) of the Act. The Tenant failed to appear for this hearing and did not provide a preponderance of evidence to dispute the Landlord's evidence.

I accept the Landlord's compelling photographic, witness, and invoice evidence and find the Tenant is liable to pay for the costs the Landlords incurred to remedy the damage to the rental unit. I also find the Landlord took reasonable steps to mitigate loss by doing the labor work themselves.

As a result, I grant the Landlord's total monetary claim of \$2,030.04. As the Landlord has been successful in this matter, the Landlord is also entitled to recover the \$100.00 filing fee for the cost of having to make this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$2,130.04. As the Landlord already holds \$360.00 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of \$1,770.04.

Copies of this order are attached to the Landlord's copy of this Decision. 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 voluntary payment. The Tenant may also be held liable for any enforcement costs.

Conclusion

The Tenant caused damage to the rental unit. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the remaining amount of \$1,770.04. 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: October 19, 2017

Residential Tenancy Branch