



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord provided evidence that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 15, 2017 and has provided a copy of the Canada Post Customer Receipt and Tracking label as confirmation of service. The tenant confirmed service of the notice of hearing package and that no documentary evidence was submitted by the tenant. Both parties also confirmed that the landlord served the tenant with their documentary evidence via Canada Post Registered Mail on March 16, 2017. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss, for unpaid rent and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2016 on a fixed term tenancy until August 31, 2017 as shown by the submitted copy of the signed tenancy agreement dated July 24, 2016. The monthly rent was \$775.00 payable on the 1st day of each month. A security deposit of \$375.00 was paid. A condition inspection report for the move-in was completed on September 1, 2015.

The landlord seeks an amended monetary claim of \$1,537.01 which consists of:

\$775.00	Unpaid Rent, August 2017
\$25.00	Late Rent Fee
\$737.01	Cleaning/Maintenance Charge(s)
-\$108.28	Replace Countertop
-\$112.00	Cleaning (8 hrs. @ \$14/hr.)
-\$236.28	Countertop Install, labour
-\$10.00	Estimated Cost, Cleaning Supplies
-\$245.45	Painting, Smoke Damage to Walls
-\$25.00	Garbage Removal Charge

The landlord cancelled the original \$8.00 charge for blind repair(s).

Both parties confirmed that the tenant was evicted as a result of unpaid rent. The landlord claims that a condition inspection report for the move-out was conducted without the tenant on August 22, 2017 on which the landlord discovered the rental unit left dirty and requiring repairs. The landlord found that numerous personal items were left by the tenant requiring removal. The landlord found that the tenant had smoked during the tenancy leaving the walls damaged requiring re-painting.

The landlord claims that during the move-in on September 1, 2015 the rental was provided to the tenant in a "brand new" condition as shown by the completed report.

The tenant argued that he had provided notice to end the tenancy to the landlord at the end of July 2017 as shown in the copy of the letter dated July 30, 2017. This notice states that the last day of tenancy to be August 31, 2017. The tenant vacated the rental

unit after being served a 10 Day Notice to End Tenancy for Unpaid Rent for August 2017. The tenant confirmed that he placed a “stop payment” on the August 2017 rent as he was being evicted for unpaid rent. The tenant also confirmed that the countertop was damaged (burned) by him and does not contest this portion of the landlord’s claim.

The tenant also claims that he had a verbal agreement with the landlord’s agent to pay the rental arrears owed to continue the tenancy. The landlord disputed this claim stating that no agreement had been made.

The tenant disputes the landlord’s claims that the rental unit was left dirty requiring cleaning as he was not allowed to return and clean the rental unit after being evicted. The tenant also argued that the walls were brown in color and that there is no smoke damage to the walls.

In support of these claims the landlord has submitted copies of:

- Signed tenancy agreement
- A completed condition inspection report for the move-in dated September 1, 2015
- An incomplete condition inspection report for the move-out dated August 22, 2017
- Landlord’s Move-Out Report
- Landlord’s Move-Out Checklist
- Landlord’s Move-In/Move-Out/Charge Analysis Form dated August 22, 2017
- Landlord’s Work Order Request for cleaning, 8 hours detailed
- Invoice dated September 4, 2017 for a countertop
- Invoice for \$236.25 for Countertop install
- Invoice dated August 28, 2017 for Painting of entire rental
- 10 Day Notice for Unpaid Rent dated August 8, 2017 for \$775.00 in Unpaid Rent
- 31 photographs of the rental unit showing; dirty refrigerator, a couch, various items left in closet, boxes and clothes, dirty flooring, 4 chairs, a table, dirty floor in bathroom, dirty toilet, burned countertop, dirty sink, dirty stovetop, dirty oven

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the affirmed testimony of both parties and find on a balance of probabilities that the landlord has provided sufficient evidence that the tenant vacated the rental unit leaving it dirty and damaged as claimed, with the exception of the painting claim (smoke damaged walls). Although the tenant disputed the landlord's claims, the landlord has provided a condition inspection report for the move-in on September 1, 2015 as a comparison with the submitted copy of the incomplete condition inspection report for the move-out dated August 22, 2017. This is supported by the landlord's 31 photographs of the rental unit at the end of tenancy in conjunction with the submitted invoice(s)/ receipt(s). As such, the landlord has been successful in establishing a claim for \$1,291.56.

As for the painting claim of \$245.45, the landlord claims that smoking damage has occurred, but relies solely on the invoice from the painter dated August 28, 2017. The tenant has disputed this claim stating that the walls were brown in color and that there was no viewable damage. A review of the invoice shows no details for service other than that it was a "Full Paint". On this basis, I find that the landlord has failed to provide sufficient evidence that there was any smoke damage to the walls. This portion of the landlord's claim is dismissed.

The landlord having been substantially successful in his application is also entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the combined \$575.00 security and pet damage deposits I partial satisfaction of these claims.

Conclusion

The landlord is granted a monetary order for \$816.56 which consists of:

Total Claim Established \$1,291.56 + \$100.00 Filing Fee - \$575.00 Security/Pet Damage Deposits.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: April 10, 2018

Residential Tenancy Branch