



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNSD MNDC FF

Introduction

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

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

While the landlord's agent, MG, attended the hearing by way of conference call, the tenants did not. I waited until 2:10 p.m. to enable the tenants to participate in this scheduled hearing for 2:00 p.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package on September 18, 2017, by way of registered mail to the forwarding address provided by the tenants. The landlord's agent provided Canada Post tracking numbers in their evidence. In accordance with sections 89 and 90 of the Act, I find that the tenants were deemed served with the landlord's application on September 23, 2017, five days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damage losses?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2015, with monthly rent set at \$1,450.00. The landlord collected a security deposit in the amount of \$725.00 for this tenancy. The tenants moved out on August 31, 2017.

The landlord provided the following list of damages for his monetary claim:

Item	Amount
Suite Cleaning	\$75.00
Painting and Wall Repairs	250.00
Bathroom door replacement	300.00
Towel Rack Repair	100.00
Repair of master bedroom door	150.00
Refrigerator door Replacement	1,200.00
Move Out Fees	70.00
Bylaw fines	190.00
Total Monetary Order Requested	\$2,335.00

The landlord made written submissions for their application. In their written submissions, the landlord stated that both move-in and move-out inspections were completed for this tenancy. On August 31, 2017, one of the tenants attended the move-out inspection. At this inspection the tenant agreed to the cleaning fee, the move out fee, and bylaw fines. After the inspection was completed the landlord submitted that they had discovered additional damage that was missed during the move-out inspection. The landlord made several attempts to communicate this to the tenants, and provided a summary of the damage claims to the tenants. The landlord included, in their evidence, the correspondence to the tenants about the damage. The landlord has not received any response from the tenants to their communication, or to this application. The landlord

provided in evidence colour photos to support their claim as listed above, as well invoices, estimates, and a detailed summary of the damage.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The landlord provided a very detailed summary of the damages caused by the tenant, which was supported by colour photos, receipts, estimates, and invoices.

The landlord provided undisputed testimony to the damage caused by the tenants, as the tenants did not attend this hearing. I find that the photographic and documentary evidence provided by the landlord supports the sworn testimony of the landlord that on a balance of probabilities that these damages had occurred during this tenancy. I find that the landlord provided sufficient evidence to show that the tenants did not take reasonable care and attention to leave the suite in undamaged condition. On this basis, I find that the landlord is entitled to compensation in the amount of \$2,335.00 for the tenants' failure to comply with section 37(2)(a) of the *Act*.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

The landlord continues to hold the tenants' security deposit of \$725.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$725.00 in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$1,710.00 in the landlord's favour under the following terms for the losses associated with this tenancy. I allow the landlord to retain the \$725.00 security deposit in satisfaction of their monetary claim. The landlord is also authorized to recover \$100.00 for the filing fee.

Item	Amount
Suite Cleaning	\$75.00
Painting and Wall Repairs	250.00
Bathroom door replacement	300.00
Towel Rack Repair	100.00
Repair of master bedroom door	150.00
Refrigerator door Replacement	1,200.00
Move Out Fees	70.00
Bylaw fines	190.00
Filing Fee	100.00
Less Security Deposit	-725.00
Total Monetary Order	\$1,710.00

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this 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 11, 2018

Residential Tenancy Branch