



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Advantage Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on November 17, 2017 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on November 22, 2017. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy, under written agreement, started on December 1, 2016 on a fixed term to end October 31, 2017 with the Tenant required to move out at the end date. The Tenant moved out on November 1, 2017. During the tenancy rent of \$2,000.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,000.00 as a security

deposit. The Parties mutually conducted a move-in inspection with a completed inspection report copied to the Tenant. The Parties mutually conducted a move-out inspection with completed inspection report copied to the Tenant. On the move-out report the Tenant agreed to a deduction of \$420.00 from the security deposit for carpet cleaning, painting a rec room wall that had been left with dart holes, and the replacement of lightbulbs and batteries.

The Landlord seeks an order to retain the agreed upon amount of \$420.00 from the Tenant's security deposit. The Landlord provides a receipt from one company that sets out the cost of \$200.00 for the carpet cleaning and \$175.00 for painting the unit.

The Landlord states that the Tenant also left the walls in a bedroom damaged and claims \$80.00 for the cost of the paint. The Landlord states that the bedroom was painted at the same time as all the painting that was done. The Landlord does not have an additional receipt for the extra amount claimed. The move-out inspection does not note any damage to any bedroom walls and the Landlord states that at the time of the move-out stickers on the wall were not seen to be a problem however the later removal of those stickers caused the paint to peel off. No photos or receipt was provided for this claim.

The Landlord states that the Tenant left the front door damaged by gouges from a dog and claims \$300.00. No photos or an invoice are provided and the move-out inspection notes that the entry door was left in satisfactory condition.

The Landlord states that a spindle was damaged by a dog and claims \$125.00. A photo was provided. No invoice was provided and the move-out inspection report does not indicate any damage to a spindle anywhere. The Landlord states that the spindle was replaced by the owner and no receipt was obtained for this claim.

The Landlord states that the Tenant damaged septic tank area by driving over the area and claims \$75.00. The Landlord states that the amount claimed is based on an estimate. No estimate or invoice was provided and no damage to the septic area is indicated on the move-out inspection report. The Landlord provides a photo.

Analysis

Section 37 of the Act provides 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. Section 38(4) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Based on the evidence of the Tenant's written agreement to a deduction of **\$420.00** from the security deposit for damage to the unit that was set out on the move-out report I find that the Landlord has substantiated an entitlement to this cost.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Section 21 of the Residential Tenancy Regulations (the "Regulations") provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary.

As the move-out report notes the entry door to be in satisfactory condition, as there is no photo showing any damage to a door, and as no invoice was provided for any costs for repair or replacement I find that the Landlord has not substantiated an entitlement to the cost claimed and I dismiss the claim in relation to the entry door.

As the Landlord indicates that the unit was all painted at the same time, as the painting and carpet invoice indicates that there is only a charge of \$175.00 for painting, as the Landlord has been found entitled to this cost, and as no invoice was provided for the additional amount claimed, I find that the Landlord has not substantiated an entitlement to the additional painting costs and I dismiss the claim for the extra \$80.00.

As the Landlord did not provide any receipts or invoices to substantiate any costs being incurred in relation to the claims for damage to a spindle and the septic tank area I find that the Landlord has not substantiated the costs claimed. I also note that the photo of the septic area is grainy, unclear and does not depict the damage described. However given the photo of the damage to the spindle I find that the Landlord has substantiated that the Tenant left this item damaged beyond reasonable wear and tear and I find that the Landlord is therefore entitled to a nominal amount of **\$20.00** for this damage.

As the Landlord's claims beyond those agreed to by the Tenant from the outset had no to little success, I decline to award recovery of the filing fee that the Landlord. As the Landlord still holds the security deposit, I order the Landlord to retain **\$440.00** from the security deposit plus zero interest of **\$1,000.00** and to return the remaining amount of **\$560.00** to the Tenant forthwith.

Conclusion

I Order the Landlord to retain \$440.00 from the security deposit plus interest in the amount of \$1,000.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$560.00**. If necessary, this order may be filed in the Small Claims 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: June 20, 2018

Residential Tenancy Branch