



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession, for a monetary order for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by priority registered mail on August 24, 2018. A Canada post tracking number was provided as evidence of service, which shows that the tenant signed for the package on April 30, 2018. I find that the tenant has been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. I refer only to the relevant facts and issues in this decision.

Preliminary matters

At the outset of the hearing the landlord was informed that since their application for dispute resolution did not include a claim for loss of rent, I decline to hear that issue because section 59 of the Act, requires the other party must have the full particulars of the claim against them. Further, the landlord’s claim was not amended and you cannot make a claim through their evidence.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on June 1, 2011. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenant paid a security deposit of \$775.00. The tenancy ended on April 30, 2018.

A move-in and move-out condition inspection report was completed.

a.	Ceiling repair	\$2,400.00
b.	Washroom repair	\$1,900.00
c.	Floor repair	\$2,700.00
d.	Extra fob	\$ 200.00
e.	Painting	\$1,200.00
f.	Strata fine – subletting	\$ 500.00
g.	Filing fee	\$ 100.00
	Total claimed	\$9,000.00

The landlord testified the tenant was subletting the rental unit, which caused damage to the rental unit that was beyond normal wear and tear. The landlord stated that the tenant agreed that they are responsible for the repairs to the ceiling, washroom, floor and painting. The landlord seeks to recover the above listed amounts. Filed in evidence are photographs of the damage.

The landlord testified that the tenant obtained an extra fob during the tenancy that was not returned. The landlord seeks to recover the cost of the fob in the above noted amount.

The landlord testified that they were fined by the strata for the tenant subletting the premises without consent. The landlord seeks to recover the cost of the fine in the above noted amount.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this matter the tenant signed for the landlord's application for dispute resolution on April 30, 2018. Since the tenant did not appear, I find the landlord's claim is unopposed.

The tenant agreed in the move-out condition inspection report that they are responsible for damage to the ceiling, floor, bathroom and painting. The photographs support this was not normal wear and tear. Therefore, I find the landlord is entitled to recover the amount for these items in the total amount of **\$8,200.00**

I accept the unopposed evidence of the landlord that the tenant obtained an extra fob during the tenancy which was not returned. I find the tenant breached the Act, when

they failed to return all keys that give access to the premises. Therefore, I find the landlord is entitled to recover the cost of the fob in the amount of **\$200.00**.

I accept the unopposed evidence of the landlord that they received a strata fine because the tenant was illegally subletting the premises. I find the tenant breached the Act, when they did not obtain the landlord's consent to sublet. Therefore, I find the landlord is entitled to recover the strata fine in the amount of **\$500.00**.

I find that the landlord has established a total monetary claim of **\$9,000.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$775.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$8,225.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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