



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Middlegate Developments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting a monetary order for compensation and damages and to retain the security deposit in partial satisfaction of the claim. The Landlord also requests an order for payment of the filing fee.

The Landlord’s agent appeared for the scheduled hearing. The Tenant did not attend this hearing, although I left the teleconference hearing connection for 10 minutes in order to enable the Tenant to call into this teleconference hearing scheduled 1:30 p.m.

The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord states that the Notice of Hearing and the evidence package were served on the Tenant by registered mail through Canada Post on January 16, 2018 and provided the tracking number. The address used was the one provided by the Tenant as her forwarding address. I am satisfied that the Tenant was properly served in accordance with section 89 of the Residential Tenancy Act and she is deemed to have received that Notice on January 21st, pursuant to the provisions of section 90.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Landlord entitled to a monetary order for compensation and damages, pursuant to section 67 of the Residential Tenancy Act (“Act”)?

Is the Landlord entitled to retain the security deposit pursuant to section 38 of the Act?

Is the Landlord entitled to reimbursement of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

The tenancy began August 1, 2012 and ended on December 30, 2017 after the Tenant gave notice to end the tenancy. Rent was \$977.00, payable on the first of each month; this was increased over time to \$1,111.00. A security deposit of \$488.50 and a remote-control access fob deposit of \$30.00 were also paid; both were held in trust on behalf of the Tenant. A copy of the tenancy agreement was submitted into evidence.

The Landlord made attempts to arrange a move-out inspection with the Tenant, the final notice being served on the Tenant for a December 31st inspection using the prescribed format provided by the Residential Tenancy Branch; the Tenant did not attend and the Landlord completed a Condition Inspection Report in her absence once the apartment was vacant, signed it and submitted it into evidence. The Tenant provided her forwarding address in writing to the Landlord on November 29, 2017, a copy of which was submitted. The apartment was re-rented for the following month.

The Landlord filed an application on January 11, 2018 and is claiming the following expenses:

Drapery cleaning	\$115.20
Removal of property	\$300.00
Cleaning	\$100.00
Filing Fee	\$100.00

Receipts for these expenses, as well as photographs, were submitted for consideration. The drapes were dirty and required cleaning, there was furniture and personal items left behind that had to be hauled away, the Tenant had a cat. Cleaners spent another 5 hours at \$20.00 per hour cleaning the premises due to the pet, to prepare it for the new renter.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a 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.

As I am satisfied that the Tenant was properly served with Notice, I chose to proceed with the hearing in her absence.

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

The Tenant is required to leave the premises clean and in a state of repair at the end of the tenancy:

37 (1) *Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*

(2) *When a tenant vacates a rental unit, the tenant must*

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the photographs submitted, the Condition Inspection Report and the testimony provided, I find that the Tenant was in breach of section 37 as she failed to properly clean the premises and left behind personal items which the Landlord had to dispose of. The Landlord submitted invoices to support the claim of \$515.20; I am satisfied that the Landlord has taken reasonable measures to mitigate any losses by re-renting the premises quickly, and that the Landlord should be awarded the sum of **\$515.20** for expenses incurred.

The Landlord asks that the security deposit and remote deposit be retained in partial satisfaction of the award; I find that the Landlord has complied with section 35 by providing opportunities for the Tenant to be present for a final walk-through inspection to record the condition of the premises, and that she chose not to attend. The Landlord filed its Application within 15 days of the end of the tenancy to retain the security

deposit, in accordance with section 38 of the Act. There is no interest accruing on the amount of the deposits.

I find that the Landlord is entitled to retain the deposits of **\$518.50** in partial satisfaction of the monetary award. As the Landlord was successful in its claim, I am awarding the filing fee of **\$100.00**. The final monetary award is calculated as follows:

Item	Amount
Cleaning and expenses	\$515.20
Less Security and Remote Deposit	(518.50)
Recovery of Filing Fee for this Application	\$100.00
Total Monetary Order	\$96.70

This Order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenants' copy of this Decision.

Conclusion

The Landlord shall retain the security deposit and remote deposit of \$518.50.

The Tenant shall pay forthwith to the Landlord the balance of the monetary order, in the sum of \$96.70.

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: August 17, 2018

Residential Tenancy Branch