



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Group Del Mar Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDR, MNDC, 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 damages to the unit - Section 67;
2. A Monetary Order to retain the security deposit - Section 38;
3. A Monetary Order for unpaid rent - Section 67;
4. A Monetary Order for compensation - Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. In a decision dated March 8, 2018 the Landlord obtained an order for substituted service of the application for dispute resolution and notice of hearing (the “Materials”) to the Tenant by email. The Landlord sent the Materials by email on March 9, 2018 in accordance with Section 89 of the Act that allows for substituted service orders made under Section 71 of the Act. 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 July 28, 2014. The Tenant gave notice to end the tenancy for September 30, 2017 but ceased to occupy the unit by

September 5, 2017. In the last year of the tenancy rent of \$1,965.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$925.00 as a security deposit and \$925.00 as a pet deposit. The Parties mutually conducted a move-in inspection with a completed condition report copied to the Tenant. The Landlord made more than two offers by text to the Tenant for a move-out inspection without response to the offers from the Tenant. The Landlord sent emails dated September 8 and 29, 2017 with two different move-out inspection dates however the Tenant did not accept attendance at either. The Landlord carried out the inspection and completed the report with a copy to the Tenant in the evidence package.

The Landlord states that the Tenant left the unit with damages and claims \$1,050.00 for repairs. The invoice dated October 16, 2017 indicates that repairs were made to the floor, laundry door, paint to the laundry door, and island moulding. The Landlord provides photos of the damages. The Landlord states that the unit was new at move-in.

The Landlord states that the Tenant left household and furnishing items in the unit and the Landlord claims \$234.41 as the costs to remove these items. The Tenant informed the Landlord that the items left were garbage and that the Tenant would not be returning to collect them. The Landlord provides an invoice dated October 4, 2017 for removal costs.

The Landlord states that the Tenant changed the locks to the unit without permission from the Landlord and without providing the Landlord with a key. The Landlord states that despite repeated requests for a copy of the key the Tenant never provided the Landlord with such a copy and on September 18, 2017 the Landlord had to attend the unit for emergency repairs and to show the unit. As the Landlord did not have the key to enter the unit the Landlord obtained a locksmith to change the locks. The Landlord claims the costs of \$120.00 to rekey the unit and provides an invoice for the costs dated September 18, 2017.

The Landlord states that the Tenant failed to return the mailbox key and claims \$187.95 for its replacement. The Landlord provides an invoice for this cost dated October 3, 2017.

The Landlord states that the Tenant failed to pay a move-out fee and the Landlord claims \$100.00. The Landlord states that the no move-out fee was required at the time the tenancy agreement was signed and that the fee was later imposed by the Strata sometime between 6 months and 2 years after the tenancy started.

The Landlord states that the Tenant failed to pay the rent for September 2017 and claims \$1,965.00.

It is noted that the total monetary amount set out in the application as being claimed is \$3,469.00. The monetary order worksheet details costs totalling \$3,657.36. No amendment was made to the application to increase the total amount claimed in the application to equal the amount of the costs set out on the worksheet.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the Landlord's undisputed evidence I find that the Tenant failed to pay rent for September 2017 and that the Landlord has substantiated an entitlement to **\$1,965.00**.

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, and 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 undisputed evidence of the damages to the unit and considering the invoice for payment of the costs claimed for the repairs I find that the

Landlord has substantiated the entitlement to **\$1,050.00**. Based on the undisputed evidence that the Tenant failed to return the mail key and given the invoice for the costs incurred to replace the key I find that the Landlord has substantiated an entitlement to **\$187.95**. Based on the undisputed evidence that the Tenant left household items described by the Tenant as garbage at the unit and given the invoice for the costs incurred to remove the garbage I find that the Landlord has substantiated an entitlement to **\$234.41**.

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. Based on the undisputed evidence that the tenancy agreement did not provide for any move-out fee, considering that no provision for the application of strata rules is set out in the tenancy agreement, and as no addendum to the tenancy agreement was provided as evidence, I find that the Landlord has not substantiated that the Tenant breached the tenancy agreement by failing to pay the move-out fee. I dismiss this claim.

Section 31(3) of the Act provides that a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered the change. Based on the undisputed evidence that the Tenant changed the locks without the Landlord's permission, based on the undisputed evidence that the Landlord had to obtain a locksmith to gain entry to the unit and given the invoice for the locksmith costs I find that the Landlord has substantiated an entitlement to the costs claimed of **\$120.00**. As the Landlord has been primarily successful with its claims I find that the Landlord is entitled to recovery of the **\$100.00** filing fee.

Although the above entitlements amount to a total of \$3,657.36, as the Landlord limited its total claim to \$3,469.00 in the application and did not amend the application to increase the total amount claimed, I find that the Landlord is restricted to the total amount claimed in the application of **\$3,469.00**. Deducting the combined security and

pet deposit of **\$1,850.00** plus zero interest from the entitlement leaves **\$1,619.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of **\$1,850.00** in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$1,619.00**. 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 Act.

Dated: October 3, 2018

Residential Tenancy Branch