



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENSON REALTY
and [tenant name suppressed to protect privacy]

DECISION

Code MNDC, MNSD, FF

Introduction

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

The landlord’s agent 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’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on August 1, 2018. A Canada post tracking number was provided as evidence of service. I have noted the tracking number on the covering page of this decision.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord’s agent 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 have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

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 parties entered into a fixed term tenancy which began on January 13, 2018 and was to expire on January 31, 2019. Rent in the amount of \$1,650.00 was payable on the first of each month. The tenant paid a security deposit of \$825.00. The tenancy ended on by mutual agreement on July 31, 2018.

The landlord claims as follows:

a.	Carpet cleaning	\$ 73.50
b.	Strata smoking fines	\$ 600.00
c.	Damage to ceiling	\$ 236.25
d.	Filing fee	\$ 100.00
	Total claimed	\$1,009.75

The landlord's agent testified that the tenant did not clean the carpets at the end of the tenancy and they were dirty. The landlord seeks to recover the carpet cleaning cost in the amount of \$73.50. Filed in evidence is a receipt.

The landlord's agent testified that the tenant received four (4) smoking fines issued by the strata. The agent stated the tenant paid for one (1) of the fines; however three (3) fines totaling \$600.00 were outstanding which they had to pay. The landlord seeks to recover the strata fines in the amount of \$600.00. Filed in evidence is strata ledger for the premise.

The landlord's agent testified that the tenant caused damage to the ceiling below them. The agent stated that the tenant gave them permission to keep \$237.00 from the security deposit. The landlord seeks to recover the actual cost of the charge back from the strata in the amount \$236.25.

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.

I accept the undisputed testimony of the landlord's agent that the tenant did:

- not clean the carpets at the end of the tenancy;
- did not pay the three (3) strata fines for smoking; and
- gave the landlord permission to retain from the security deposit the amount of \$237.00 for the damage to the lower unit ceiling.

I find the tenant breached the Act, when they failed clean the carpets, and when they caused damage to the lower unit ceiling and when they failed to pay three (3) strata fines for smoking. As a result, I find the landlord did suffer a loss. Therefore, I find the landlord is entitled to recover the cost of the above items in the total amount of **\$909.75**

I find that the landlord has established a total monetary claim of **1,009.75** comprised of the above amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$825.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$184.75**.

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: December 12, 2018

Residential Tenancy Branch