



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROPERO INTERNATIONAL REALTY
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The tenant provided testimony that she did not serve the landlord with the submitted photographs for the hearing. I accept the undisputed testimony of both parties and find that the tenant was properly served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail as per sections 88 and 89 of the Act. The tenant having failed to serve the landlord with the submitted documentary evidence (photographs) leaves me no choice but to exclude the tenant's documents from consideration in this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on December 1, 2018 on a fixed term tenancy ending on November 30, 2019 as per the submitted copy of the signed tenancy agreement dated October 20, 2018. The monthly rent was \$1,950.00 payable on the 1st day of each month. A security deposit of \$975.00 was paid on October 30, 2018.

Both parties agreed that the tenant emailed the landlord on January 1, 2019 stating that the tenant had vacated the rental unit.

The landlord seeks a monetary claim of \$1,116.13 which consists of:

| | |
|----------|---|
| \$566.13 | Pro-rated Rent, January 2019 (\$1,950.00/31days X 9 days) |
| \$25.00 | NSF Charge, January 2019 |
| \$275.00 | Break Lease Fee/Liquidated Damages |
| \$250.00 | Cleaning/Wall Repair Costs |

The landlord provided testimony that the tenant failed to give proper 1 month notice to end the tenancy and as a result the landlord incurred a loss of rental income for 9 days. The landlord stated that the tenant emailed the landlord on January 1, 2019 (email submitted in evidence) that she had vacated the rental unit the previous day, it had been cleaned and the keys left inside. The tenant's forwarding address was provided at this time. The tenant disputed the landlord's claim and referred to the same email evidence citing that a mutual agreement to end tenancy was given to the landlord to end the tenancy on December 31, 2018. The landlord disputed this claim stating that no mutual agreement was made. The tenant confirmed that the landlord did not accept the proposal.

The landlord also clarified the remaining portion of the claim based upon the submitted monetary worksheet detailed as:

| | |
|---------|-----------------------------------|
| \$20.00 | Cleaning, Kitchen Cabinet, 1 hour |
| \$35.00 | Cleaning, Kitchen Fridge, 1 hour |
| \$20.00 | Cleaning, Kitchen Cabinet, 1 hour |
| \$20.00 | Cleaning, Kitchen Cabinet, 1 hour |
| \$50.00 | Cleaning, Kitchen Stove, 1 hour |
| \$35.00 | Wall Repair, 1 hour |
| \$35.00 | Wall Repair, 1 hour |
| \$35.00 | Wall Repair, 1 hour |

The landlord claims that the tenant vacated the rental unit leaving it dirty and damaged. The landlord's agents clarified that 3-4 hours of cleaning and 3 hours for wall repairs were required to clean and repair the wall holes. The tenant disputed the landlord's claims stating that the rental unit was left "very clean" in her opinion as she had a total of 3 persons cleaning the rental unit. The tenant also argued that the "holes" referenced by the landlord were picture holes from nails used to hang pictures. The tenant has referred to the landlord's submitted photographs to confirm this. The landlord stated that 3 hours of cleaning was required for approximately 10 kitchen cabinets. The landlord stated that some cabinets were left dirty with grease/oil. A review of the 7 black and white photographs submitted by the landlord show some dirt/smudges in the cabinets, but nothing to the extent requiring 3 hours of cleaning. The landlord also relies upon the same submitted photographs which show some 14 picture nail holes in all of the submitted photographs.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I find that the landlord has established a claim for the following:

| | |
|----------|---|
| \$566.13 | Pro-rated Rent, January 2019 (\$1,950.00/31days X 9 days) |
| \$25.00 | NSF Charge, January 2019 |
| \$275.00 | Break Lease Fee/Liquidated Damages |

The landlord provided undisputed evidence that the tenant vacated the rental unit without proper notice and suffered a loss of rental income for 9 days for \$566.13; incurred a NSF charge of \$25.00 due to the tenant failing to notify the landlord that there were no funds in her account for the automatic pre-pay rent that the tenant had subscribed to for January 1, 2019; and the \$275.00 lease break fee/liquidated damages as shown in the signed tenancy agreement in section #5, which provides for the

\$275.00 fee if the tenant breaches the tenancy by pre-maturely ending it before the end of the fixed term of November 30, 2019. On these claims, the landlord has established a total claim of \$866.13.

On the landlord's claim for cleaning/ wall repairs, I find that the landlord has failed in their application. The landlord relies upon 7 black and white photographs depicting the condition of the rental unit. The landlord has also specified that each of the items of claim required 1 hour of cleaning/repair time for each. The tenant has disputed these claims stating that picture nail holes are considered wear and tear and has disputed the landlord's claim that the rental unit was left "very clean". As such, I find on a balance of probabilities that the landlord has failed to provide sufficient evidence of 3 hours of wall repair for the picture nail holes and 5 hours of cleaning for the cabinets, fridge and stove. These portions of the landlord's claim are dismissed.

Conclusion

The landlord is granted a monetary order for \$866.13.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial 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: May 07, 2019

Residential Tenancy Branch