



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND MNSD MNDC FF

Preliminary Issues

The Landlords testified they sent the Tenant copies of their evidence via registered mail January 5, 2011. The evidence is deemed to have been received by the Tenant five days later on January 10, 2011, the day before today's hearing.

The *Residential Tenancy Branch Rules of Procedure* #3.5(a) stipulate that copies of evidence not available to be file with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding. In this case the Tenant was not deemed served the evidence until one day prior to the hearing; therefore in upholding the principals of natural justice the Landlords' documentary evidence will not be considered in my decision. I will however consider the Landlords' affirmed testimony.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, site, or property, to keep all or part of the pet and security deposits, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlords to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail September 11, 2010. Mail receipt numbers were provided in the Landlords' verbal testimony. The Tenant is



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

deemed to be served the hearing documents on September 16, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlords appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite her being served notice of this hearing in accordance with the *Act*.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Landlords proven entitlement to a monetary claim as a result of that breach?

Background and Evidence

The parties entered into a written month to month tenancy agreement effective March 1, 2010. Rent was payable on the first of each month in the amount of \$600.00. The Tenant paid a security deposit of \$300.00 on February 25, 2010 and a total of \$100.00 towards the pet deposit which consisted of two payments of \$50.00 each on May 19, 2010 and June 15, 2010. The tenancy ended on July 31, 2010 when the Tenant provided the Landlords written notice to end the tenancy.

The Landlords testified that they provided the Tenant with a form indicating what cleaning was required to be completed at the end of the tenancy which included costs that would be charged for items not cleaned. They stated that when they attended the unit to conduct the move-out inspection the Tenant had not even begun to clean unit or move her possessions. The Landlord left to purchase the items required to clean and repair the unit so when they returned to conduct the inspection they had the materials and actual costs to purchase them.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

The move-out inspection form was completed and the Tenant signed the form agreeing to the following charges:

- \$100.00 in late payment fees for when rent was paid late in April, May, June and July 2010. Section 10 of the tenancy agreement provided a late payment charge of \$25.00 for each late payment; and
- \$99.00 for carpet cleaning; and
- \$109.05 for window cover cleaning; and
- \$200.00 for general cleaning of the rental unit; and
- \$70.00 to repair damage caused to the carpet and the laundry room sink drain; and
- \$50.00 to paint the unit; and
- \$50.00 to replace broken window blinds; and
- \$25.00 because only one of the two keys to the unit were returned; and
- \$46.00 for removal of debris and two mattresses that were left in the garage and carport; and
- \$105.22 for the cost of paint and cleaning supplies.

The above amounts and items listed were repeated to the Landlords four times as they confirmed all amounts were listed on the move-out inspection form prior to the Tenant signing agreement to the deductions. They confirmed no items were added after the Tenant signed the document and the Tenant was given a copy of the document the day she signed it, July 31, 2010.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

In this case the testimony supports the Landlords and Tenant agreed to the presence of the damage and that the damage occurred during the course of the tenancy. The damages were not repaired by the Tenant in violation of sections 32 and 37 of the Act. I accept that the parties entered into a written agreement that the Tenant was responsible for payment of \$854.27 (\$100.00 + 99.00 + 109.05 + 200.00 + 70.00 + 50.00 + 50.00 + 25.00 + 46.00 + 105.22) to repair these damages and that this amount was to be offset with the security and pet deposits.

The Landlords have been successful with their application; therefore I award recovery of the filing fee.

I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's deposits as follows:



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Agreed costs to repair damages	\$854.27
Subtotal (Monetary Order in favor of the landlord)	\$904.27
Less Security Deposit of \$300.00 plus Pet Deposit of \$100.00 plus interest of \$0.00	-400.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$504.27

Conclusion

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$504.27**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court 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: January 11, 2011.

Residential Tenancy Branch