



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KEKINOW NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on September 25, 2013, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; to keep the security deposit; 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.

The Landlord testified that the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on September 25, 2013, by registered mail. Canada Post tracking information was provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on September 30, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenant's absence.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord testified that the Tenant entered into a new tenancy at this location sometime in mid 2005. Rent was subsidised and effective January 1, 2013 rent was \$599.00, payable on the first of each month. The Tenant had paid a security deposit of \$500.00 back in 2002 which was transferred to this new tenancy in mid 2005. The tenancy ended on June 30, 2013 and sometime in early July 2013 the Tenant provided the Landlord with her forwarding address.

The Landlord pointed to the move out condition inspection report form that was completed on July 15, 2013 which indicates the unit was left unclean, damaged, and scattered with debris. As a result they are seeking \$1,243.00 to cover the damages.

This amount is based on estimates received from their contractors as well as generic rates applied to cleaning and repairs and determined by their staff.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their documentary evidence.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) 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.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

In this instance, I find the Landlord has provided insufficient evidence to prove or verify the actual value of their losses and/or damages claimed. The Landlord failed to provide invoices or receipts for the work which was done, and furthermore, the Agent for the Landlord testified that most of the amounts claimed were estimates or “generic amounts” of what the damages would cost to repair.

In a situation where a party is relying on estimates or generic amounts, I would expect to see a third party provide these estimates. For example, the Landlord has estimated it will cost \$100.00 to remove debris, yet there is no evidence, such as a quote from a contractor, to support this estimate. These were, simply put, guesses made by the Landlord or its Agents.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

As per the foregoing I find the Landlord has met the burden of proof to establish they suffered damages and, in the absence of the actual costs, I award them a nominal award in the amount of **\$500.00**.

The Landlord has been primarily successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is 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 Tenants' security deposit plus interest as follows:

Damages & repairs	\$500.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$550.00
LESS: Security Deposit \$500.00 + Interest 17.71	<u>-517.71</u>
Offset amount due to the Landlord	<u>\$ 32.29</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$32.29**. This Order is legally binding and must be served upon the Tenants.

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: November 13, 2013

Residential Tenancy Branch

