



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT ROYAL VILLAGE DEV. INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed and the costs of cleaning the suite, blinds and carpets.

The landlord was present. Despite each being served by registered mail sent on November 12, 2013, as confirmed by Canada Post tracking numbers, the tenant did not appear.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for rental arrears and cleaning?

Background

The landlord testified that the fixed term tenancy began in December 2012 and rent was \$1,850.00. A \$925.00 security deposit was paid. The tenancy ended on September 22, 2013.

The landlord testified that, after the tenant vacated, the move out condition inspection was scheduled for October 29, 2013 and the tenant provided their written forwarding address at that time. A copy of the tenancy agreement, copies of the move-in and move-out condition inspection reports, a copy of a "*Security Deposit Refund*" sheet and proof of service were submitted into evidence.

The landlord testified that at the time the tenant left, rental arrears of \$3,775.00 for September and October 2013 were still owed, including the late fees and NSF charges.

The landlord testified that the tenant did not leave the rental unit reasonably clean as required under the *Act* and neglected to shampoo the carpets or clean the blinds. The landlord is claiming \$150.00 for the carpets and !00.80 for the blinds.

Also being claimed is liquidated damages in the amount of \$750.00 pursuant to a term in the tenancy agreement.

The landlord's claims for cleaning, rental arrears total \$4,775.80, plus the \$50.00 cost of filing.

The landlord testified that the tenant agreed to the claimed costs as confirmed on the "*Security Deposit Refund*" sheet and the move-out condition inspection report signed by the tenant.

Analysis:

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. I find that the tenant did not pay all of the rent owed for September and October 2013 and the landlord is entitled to \$3,775.00 for rental arrears, late fees and NSF charges.

With respect to the liquidated damage claim, I find that the tenancy agreement provides for liquidated damages of \$750.00 to be paid for terminating the contract prior to the expiry date of November 30, 2013. I find the landlord is entitled to this amount.

In regard to the other claims, I find that, an applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof was on the landlord, to 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 respondent.

I find that the landlord has proven that the tenant is in agreement with the claimed costs of \$150.00 for the carpet cleaning and \$100.80 for the blinds, as evidenced by the tenant's signatures on the move-out condition inspection report verifying that the tenant agreed to pay the amounts claimed by the landlord, and on the "Security Deposit Refund" sheet.

I find that the landlord is entitled to total compensation of \$4,825.80, comprised of \$3,775.00 for rental arrears late fees and NSF charges, \$150.00 for carpet cleaning, \$100.80 for cleaning the blinds, \$750.00 in liquidated damages and the \$50.00 cost of the application.

I hereby the landlord to retain the tenant's \$925 security deposit and issue a monetary order for the remainder of \$3,900.00.

This order must be served on the tenant in accordance with the Act and if necessary can be enforced through Small Claims Court.

Conclusion

The landlord is successful in the application and is granted a monetary order for rental arrears and cleaning.

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: February 27, 2014

Residential Tenancy Branch

