



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords for a Monetary Order for: damage to the rental unit; for unpaid utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); and to recover the filing fee for the cost of making this Application.

One of the Landlords appeared for the hearing and provided affirmed testimony as well as documentary and digital evidence in advance of the hearing.

Preliminary Issues

The Landlord testified that she served the Tenant with a copy of the Application, the Notice of Hearing documents and her evidence to the Tenant by registered mail. The Landlord provided a copy of the Canada Post tracking number as evidence for this method of service and testified that she had served the above documents to the Tenant’s forwarding address as provided by the Tenant in writing to her after the tenancy had ended.

The Landlord also provided a copy of the returned envelope containing the above documents. The envelope indicates the Tenant’s forwarding address and that it was returned to the sender for the reason that it was ‘unclaimed’.

There was no appearance by the Tenant during the one hour duration of the hearing and no submission of written evidence prior to this hearing.

Section 90 of the Act states that documents served by mail are deemed to have been received five days after they are mailed. Based on the evidence provided by the Landlord, I find that the Landlord served the documents for this hearing in accordance

with Section 89(1) (c) of the Act to an address where the Tenant could have received them.

A party cannot avoid service by neglecting or failing to pick up mail or use this reason alone as grounds for a review of this decision. Therefore, I find that the Tenant was deemed served the documents for this hearing in accordance with the Act.

As a result, the hearing continued to hear the undisputed evidence of the Landlords as follows.

At the start of the hearing, the Landlord requested to keep the Tenant's security deposit in partial satisfaction of her monetary claim, as this had not been indicated on her Application. Pursuant to Section 64(3) (c) of the Act, I amended the Landlords' Application to include her request to keep the Tenant's security deposit.

The Landlords' breakdown of their monetary claim in written evidence discloses an amount in excess of \$5,000.00. However, the Application only claims \$4,999.00. The Landlord explained that they did not want to pay a higher filing fee for going above the \$5,000.00 claim limit, and as a result, only seek a Monetary Order from the Tenant in the amount of \$5,000.00.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for \$5,000.00?
- Are the Landlords entitled to keep the Tenant's security deposit in partial satisfaction of the Landlords' claim?

Background and Evidence

The Landlord testified that this tenancy started on March 15, 2014 for a fixed term of one year. The Tenant paid the Landlords a \$625.00 security deposit on March 5, 2014, which the Landlord still retains. Both parties completed a move-in condition inspection on March 21, 2013.

After the above fixed term tenancy ended, the parties entered into a new written agreement for a tenancy to start on April 1, 2014 for a fixed length of six months. Rent under this agreement was established at \$1,250.00 payable by the Tenant on the first day of each month.

The Landlord testified that she came to realize that the Tenant had her mother living with her who had a puppy. The Landlord explained that the Tenant's mother and her puppy were not authorized to be in the unit and only the Tenant who had a dog and cats were authorized. Out of concern for damage to the rental unit by the Tenant's mother's puppy, the Landlord mutually ended the tenancy with the Tenant on May 31, 2014.

The Landlord testified that the Tenant agreed to do a move out condition inspection with her on the last day of the tenancy. However, when the Landlord appeared for the inspection, the Tenant still had property in the unit and had not fully vacated it.

The Landlord testified that she agreed with the Tenant that they would do the inspection at 9 a.m. on June 1, 2014 as she had a new renter moving in shortly after. However, when the Landlord appeared at the rental unit, the Tenant had fully vacated and was gone and did not appear for the inspection. The Landlord completed the inspection in the absence of the Tenant and provided the Condition Inspection Report (the "CIR") in written evidence for this hearing.

The Landlord testified that she had received the Tenant's forwarding address in writing sometime after July 21, 2014 and made her Application on July 7, 2014.

During the hearing the Landlord testified to the following amounts being claimed:

The Landlord testified that the pets had scratched the flooring so deeply that it needed to be all sanded down, refilled and refinished with staining and a satin top coat as it was expensive flooring. The Landlord provided extensive photographic evidence of the damage to the flooring which was also indicated on the CIR. The Landlord also provided a quote from a restoration company to complete this work in the amount of **\$4,522.50**, which they seek to recover from the Tenant.

The Landlord explained that the majority of the scratches were in the living room, kitchen and hall way. However, the scratches to the master bedroom floor were minor. The Landlord provided e-mail evidence where she contacted the restoration company and asked if the amount could be reduced to not include the master bedroom in an attempt to mitigate the loss to the Tenant. However, the restoration company explained that it would not be possible to blend the restored color with the old flooring.

The Landlord testified that she had replaced all the light bulbs and spot lights at the start of the tenancy and by the end of the tenancy there were 21 halogen light bulbs that were not working. The Landlord referred to the CIR which indicated missing light bulbs and photographic evidence showing some light bulbs not working in a light fixture. The

Landlord provided a receipt for the cost of purchasing these light bulbs in the amount of **\$110.05**.

The Landlord testified that during the tenancy the Tenant asked her whether she could re-paint the rental suite. The Landlord authorized the re-painting of the suite but specified that it could only be done in neutral colors. The Landlord paid for the cost of the paint.

However, when the Tenant had completed the painting of the rental suite, the Landlord discovered that the Tenant had painted the living room, kitchen, master bedroom and one wall downstairs in an egg blue color which was not neutral. The Landlord explained that the remainder of the rental unit was painted in a grey color which she could live with. This was supported by the Landlord's photographic evidence. The Landlord testified that she re-painted the rental unit by herself with some staff members and seeks to charge the Tenant **\$250.00** for this work.

The Landlord also claims **\$120.00** from the Tenant for three hours of cleaning and one hour for disposal of garden waste left by the Tenant at the end of the tenancy, at \$30.00 per hour. The Landlord referred to her photographic evidence and the extensive 'DT' codes on the CIR which refer to 'Dirty' areas of the rental unit. The Landlord testified that the Tenant had failed to clean the floors, bathrooms, and cabinetry and left behind pet dirt.

The Landlord made further monetary claims for damages and unpaid utilities, but as the above amounts testified to result in a claim up to \$5,000.00 (\$4,522.50 + \$110.25 + \$250.00 + \$120.00), I have not considered and made findings on the remaining portions of the Landlord's monetary claim as disclosed in the Landlords' evidence.

Analysis

Section 37(2) of the Act requires a Tenant to leave a rental suite reasonably clean and undamaged at the end the tenancy. In addition, Section 21 of the Residential Tenancy Regulation states that a CIR can be used as evidence of the state of repair and condition of the rental suite unless the parties can provide a preponderance of evidence to suggest otherwise.

Policy Guideline 1 to the Act states that any changes to the rental unit not explicitly consented to by the Landlord must be returned to the original condition. The guideline also stipulates that a Tenant is responsible for replacing light bulbs in the rental unit during the tenancy.

Based on the foregoing, as well as the undisputed testimony of the Landlord, the photographic evidence, the invoices to support the costs being claimed, and the CIR, I have made the following findings in relation to the Landlord's claim on the balance of probabilities as follows:

I award the Landlord the costs for the repair work needed to the floor. The Landlord's extensive photographic evidence supports the Landlord's evidence that this was damage caused by the Tenant allowing pets in the rental unit. I also find that the Tenant attempted to mitigate loss by seeking to reduce the repair work but accept the restoration company's e-mail response that it would not be possible to complete this work to a satisfactory level without all the flooring being repaired. As a result, based on the quote provided, I find the Landlords are entitled to the repair costs claimed to the flooring.

Based on the policy guideline, I am satisfied on the evidence provided that the Tenant failed to replace the light bulbs at the end of the tenancy. I find that the Landlord is entitled to this cost as evidenced by the receipt for the purchase of these light bulbs.

I also accept the Landlord's evidence that the Tenant failed to leave the rental suite reasonably clean, as evidenced by the CIR and the Landlord's photographic evidence. I accept the Landlord's testimony that it took her four hours to clean the rental suite and dispose of the material left behind by the Tenant. Therefore the Landlord is entitled to the cleaning costs claimed.

I also accept the Landlord's evidence that the Tenant breached the authorization of the Landlord to paint the rental suite in a neutral color. The Landlord's photographic evidence indicates that the Tenant painted portions of the rental unit in a color that was not neutral. As a result, the Tenant would have been required to return the rental suite to the Landlord in a neutral color as originally agreed and authorized by the Landlord. As a result, the Landlord is entitled to the costs of re-painting the rental suite as claimed.

As the Landlords have proved their monetary claim above the \$5,000.00 value, I find that the Landlords are entitled to this amount claimed on their Application.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application. Therefore, the total amount awarded to the Landlords is **\$5,050.00**. As the Landlords already hold \$625.00 in the Tenant's deposit, I order the Landlords to retain this amount in partial

satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlords are awarded \$4,425.50.

Conclusion

For the reasons set out above, I grant the Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$4,425.00**. This Order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) 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: December 04, 2014

Residential Tenancy Branch

