



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on February 11, 2016. The tenant's agent, (the tenant) confirmed receipt of the notice of hearing package and the landlord's submitted documentary evidence. I accept the undisputed affirmed evidence of both parties and find that the landlord has properly served the tenant with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The tenant is deemed to have received the packages as per section 90 of the Act.

At the outset the tenant requested an adjournment as they were unable to respond to the landlord's documentary evidence due to a family medical emergency. The tenant stated that the tenant's mother was in hospital due to a medical emergency and that tenant was unable to complete her documentary evidence package to file in response to the landlord's claims. The tenant stated that the medical emergency occurred approximately 9-10 days prior to the hearing preventing her from filing the evidence within the allowed timeframe. The tenant stated that the documentary evidence package was 85% complete. The landlord stated that she did not have an issue with the adjournment other than that she expected the dispute to be dealt with on the

scheduled hearing date. The landlord also stated that she would be out of the country beginning on May 10, 2016 until November 10, 2016 and that access to a telephone or the internet was not regularly available.

I accept the submission of both parties and find that there is no prejudice to the landlord regarding her monetary claim if the hearing were to be adjourned. I find that the tenant's medical emergency prevented her from completing her documentary evidence to respond to the landlord's claims and that it would be unfair to proceed without an opportunity for the tenant to provide a response. The hearing was adjourned and an interim decision was given.

On November 15, 2016 the hearing was reconvened with both parties. The hearing was commenced, but due to extensive discussions and issues raised by both parties there was insufficient time to complete the hearing. The hearing was adjourned due to a lack of time. Both parties were again cautioned that no additional evidence should be submitted and would not be accepted.

On January 6, 2017 the hearing was reconvened with both parties.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental premises and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

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 January 1, 2015 on a fixed term tenancy ending on December 31, 2015 and then thereafter on a month-to-month basis. Both parties agreed that the tenancy ended on January 31, 2016. The monthly rent was \$700.00 payable on the 1st day of each month and a security deposit of \$350.00 was paid on May 27, 2014. Both parties agreed that no condition inspection reports for the move-in or the move-out were completed.

The landlord seeks a monetary claim of \$3,853.50 which consists of:

\$136.50	Replace 2 locks
\$140.00	Estimated Carpet Cleaning
\$100.00	Estimated Replacement, Missing Table
\$50.00	Estimated Replacement, 2 Missing Chairs
\$150.00	Estimated Replacement, Missing bookcase
\$400.00	Estimated Replacement, Damaged Kitchen Flooring
\$287.00	Estimated Replacement, Refrigerator
\$340.00	Estimated Replacement, Damaged Stove
\$50.00	Estimated Replacement, Damaged Window Screen
\$150.00	Estimated Costs for Cleaning Exhaust Fan, Dump Garbage and General Cleaning
\$950.00	Estimate for Painting/Repairs to Walls
\$50.00	Estimated Replacement, Broken light cover
\$80.00	Estimated Repair, Bathroom Towel Rack
\$120.00	Estimated Blind Cleaning (Bedroom/Bathroom)
\$30.00	Estimated Replacement, 3 lightbulbs
\$360.00	Estimated Repair of Damaged Chair
\$100.00	Estimated Replacement of Damaged Recliner
\$75.00	Estimated Replacement of Damaged Dresser
\$75.00	Estimated Replacement of Damaged Dresser
\$100.00	Estimated Replacement of Leaded Glass Pane in Door
\$10.00	Estimated Replacement of Smoke Alarm Batter
\$100.00	Recovery of Filing Fee

The landlords have provided affirmed testimony that the tenants vacated the rental unit on January 31, 2016 without returning the keys to the rental unit and leaving it dirty and damaged. The landlord relies upon:

Invoice, rekeying locks
 4 photographs of carpet areas, only one photo showing discoloration
 Estimate for carpet cleaning for \$130.00, work not performed
 1 photograph of a similar table that that missing
 2 photographs of a similar chair missing
 1 photograph of an ad for a bookcase similar to that missing
 2 photographs of a hole in floor, suspected burn hole
 2 photographs of back of a refrigerator, no apparent damage just dusty
 2 photographs of a refrigerator (not defrosted) and with a broken freezer door
 4 photographs of dirty stove and oven
 1 photograph of recyclables next to outdoor stairwell
 2 photographs of floor behind toilet, stained

- 1 photograph of dirty floor
- 2 photographs of scuffs on wall
- 1 photograph of light fixture with 1 lightbulb burnt out
- 2 photographs of damaged towel bar
- Receipt for reupholstered chair dated March 20, 2015
- 1 photograph of chair
- 2 photographs of dirty recliner chair
- 1 photograph of dresser outside
- 2 photographs of dresser with a damaged drawer
- 1 photograph of broken glass pane in door

The tenants have disputed the claims of the landlords stating that the estimated amounts provided by the landlords are excessive and unrealistic. However, the tenant has acknowledged and noted during the hearing that:

- the tenant did not return the keys to the rental unit
- the carpet was at least 20 years old
- there was no dining table, chairs, bookcase left by the landlord as part of a furnished rental
- the tenant confirmed that he damaged the flooring with a burned hole
- the tenant argues the refrigerator is at least 40 years old and did not function properly for which the landlord was repeatedly notified, but did not resolve
- the tenant stated that the rental unit was cleaned prior to vacating the rental unit
- the tenant disputed that there were no screens present during the tenancy
- the tenant stated that he did not clean everything, but that the garbage was recycling left in the appropriate containers as shown in the landlord's photograph
- the tenant agrees that the towel rack was damaged, but disputes the landlord's monetary claim as excessive
- the tenant agrees that he did not clean the blinds, but disputes the landlord's monetary claim as excessive
- the tenant disputes that the light bulbs were not burnt out
- the tenant disputed the landlord's claim for repair of the damaged chair stating that the chair repaired was not the chair that was in the rental unit
- the tenant argues that the damaged dressers claimed by the landlord were left outside with the carpets

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.

I find based upon the evidence provided by both parties that the landlord has failed to establish a claim for the amount claimed. I find that the landlord has established that:

The tenant failed to return the rental keys

The tenant caused damage to the flooring with a burned hole

The tenant acknowledged that he broke the towel rack

I find that the landlord has established a claim for rekeying the locks at the incurred cost claimed by the landlord of \$136.50 as shown by the submitted invoice.

I find that the landlord has failed to establish a claim for the \$400.00 in damage by the burned hole in the flooring. The landlord did not incur an actual cost nor did the landlord provide sufficient evidence that the estimated cost would be required to repair or replace the damaged floor.

I find that the landlord has failed to establish a claim for the \$80.00 in repairs for the towel rack. The landlord did not incur an actual cost nor did the landlord provide sufficient evidence that the estimated cost would be required to repair or replace the damaged floor.

On the remaining portions of the landlord's monetary claim, I find that the landlord has failed to provide sufficient evidence that the tenant caused or through their neglect damaged the rental unit and left the rental unit dirty. The tenant has disputed these claims made by the landlord and the landlord was unable to provide sufficient evidence of damage or missing furniture. The landlord failed to provide sufficient evidence that the damage was caused during the tenancy by the tenants; that there was missing furniture as part of the tenancy agreement and that the rental unit was left dirty by the tenants.

The landlord has established a total monetary claim of \$136.50.

As the landlord has only been partially successful in the application, I grant the recovery of \$50.00 of the filing fee.

I authorize the landlord to retain \$186.50 from the currently held \$350.00 security deposit in satisfaction of the claim.

I order that the landlord return the remaining portion of \$163.60 to the tenant.

Conclusion

The landlord may retain \$186.50 from the security deposit.
The tenant is granted a monetary order for return of \$163.50.

This monetary order must be served upon the landlord. Should the landlord 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: February 3, 2017

Residential Tenancy Branch