Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Carpreit Ltd. Partnership and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") seeking remedy under the *Residential Tenancy Act* ("*Act*"). The Landlord applied for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for authorization to keep all or part of 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.

An agent for the Landlord (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. No one appeared for the Tenant at the teleconference hearing.

Preliminary Matters – Service of Landlord`s Application

The Agent provided documentary evidence that he attempted to serve the Tenant with the Application and documentary evidence via registered mail to a forwarding address the Tenant had provided the Landlord in a letter dated September 29, 2018. However, the Tenant failed to pick up the registered mail, after (i) Canada Post's unsuccessful delivery attempt approximately two weeks later on October 16, 2018, (ii) a notice card being left indicating where and when to pick up the item, and (iii) a final notice card being delivered to the Tenant's forwarding address on October 22, 2018. On November 1, 2018, Canada Post returned the unclaimed registered mail to the Landlord.

Section 89 (1) of the *Act* outlines the methods of service for an application for dispute resolution, which states in part:

> **Special rules for certain documents**
>
> **89** (1) An application for dispute resolution or a decision of the director to

> proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
>
> . . .
>
> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
>
> (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

Given the proximity of when the Tenant provided her forwarding address to the time of the attempted delivery to this address, in addition to the notices of registered mail delivered, I find it more likely than not that the Tenant intentionally failed to pick up the registered mail.

Residential Tenancy Policy Guideline #11 states that where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail, does not override the deeming provision. Where the registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing. As a result, I find that the registered mail was deemed received on October 4, 2018, pursuant to 90 of the Act.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide evidence orally and answer questions; I reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order under the *Act,* and if so, in what amount?
- Is the Landlord entitled to the recovery of the cost of the filing fee under the *Act?*

Background and Evidence

The Agent submitted a tenancy agreement indicating that the tenancy started on November 1, 2015, for a fixed term ending on October 31, 2016, and to be on a month-to-month basis thereafter. The monthly rent was $1,200.00, plus parking of $45.00 per month. The Tenant paid the Landlord a security deposit of $600.00. There is a handwritten note in the tenancy agreement about one dog being allowed, but the note does not mention a pet damage deposit having been paid.

The tenancy agreement had a liquidated damages clause of $350.00, which was defined as:

> Liquidated damages are an agreed pre-estimate of the Landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or damage to the rental unit or Residential Property.

The Landlord submitted a condition inspection report with a move-in date of November 1, 2015, and a move-out date of September 30, 2018. The move-in portion of the condition inspection report indicates that most of the rental unit was in "good" condition, with a few items like carpet being classified as "fair".

The move-out portion of the condition inspection report identifies some parts of the rental unit as "good", but a number of parts are labeled "damaged" or "damaged+".

In their monetary worksheet, the Landlord claimed the following monetary compensation:

1.	Cleaning charges	$ 139.00
2.	Maintenance/repairs	$ 225.00
3.	Rent, parking, NSF fees	$1,380.48
4.	Filing fee	$ 100.00
	TOTAL	$1,844.48

These claims were substantiated with the following evidence:

A number of photographs were submitted showing holes in the walls and doors throughout the rental unit. The oven was not clean, food was left behind in cupboards, and magnets left on the refrigerator.

The Landlord's second claim for maintenance/repairs is set out on an invoice on the Landlord's letterhead stating: "DAMAGE CHARGE – Wall/Closet Holes Repairs $225.00.

The Landlord's third claim for rent, parking and NSF fees is set out in a document entitled: "Statement of Account by Transaction Date" on the Landlord's letterhead with the Tenant's name at the top of the page. The relevant dates on this are 04/01/2018 to 10/03/2018, and the rent and parking fees appear to have been paid from April 1, 2018 through August 1, 2018. However, the document shows that the Tenant's payment for September 1, 2018 was stopped on September 7, 2018 with a $25 fee charged. The document indicates that the rent was $1,280.48 and the parking $75.00 at this point, up from the start of the tenancy agreement in 2015. As such, the total monthly fees owing by the Tenant to the Landlord according to the document were: $1,355.48. When the insufficient funds fee of $25.00 is added to this, the amount owing by the Tenant for September 2018 according to the document was $1,380.48.

Analysis

While the photographs showed at least one cupboard with boxes and cans in it, a number of other photographs showed cupboards empty and fairly clean. The floor near the refrigerator appears to need to be mopped, but it could be staining on the floor that pre-dated the tenancy. The move-in portion of the condition inspection report indicates that the kitchen floor was classified as dirty with cat scratches, so the photographs of the kitchen floor at the end of the tenancy are of limited help in determining what the Tenant left behind. However, the cleanliness of the rental unit at the start of the tenancy is not relevant to the expectation that a tenant will leave it reasonably clean at the end of the tenancy. "Reasonably clean" is set out in section 37(2) of the *Act*, which states:

> **Leaving the rental unit at the end of a tenancy**
>
> **37** (2) When a tenant vacates a rental unit, the tenant must
>
> **(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**
>
> (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.
>
> [emphasis added]

“Reasonably clean” does not mean spotless or good as new, it means “reasonably” clean.

Cleaning charges were set out in an invoice on the Landlord’s letterhead with no specifics. There is no hourly fee nor the number of hours required to do the cleaning. In another invoice on a different company’s letterhead, the description stipulates: “Month end suite cleaning for a 2 bed unit – [rental unit address] for $139.00 plus GST of $6.95 for a total of $145.95. In the hearing, the Agent said this was a basic flat rate for cleaning a two bedroom unit. If the cleaning was at a reasonable rate of approximately $25.00 per hour, this would entail about 5½ hours to clean the whole rental unit. Given the overall look of the rental unit from the photographs, and the size of the rental unit, I find this is a reasonable cleaning rate.

Further, the photographs demonstrated that there were a number of holes to fix in walls and doors, the latter of which may have needed replacement, rather than repair, which adds to the cost. Accordingly, I find the $225.00 for maintenance and repairs to be reasonable in the circumstances.
I find that the Landlord’s claim of $1,340.48 for unpaid rent, parking and NSF fees is owing by the Tenant.

I find that the Landlord has sufficiently met the burden of establishing that the claims are substantiated. As a result, I award the Landlord $1,744.48 as a monetary claim, plus $100.00 in filing fee recovery, since the Application was successful.

Conclusion

The Landlord has established a total monetary claim of $1,844.48, from which I have deducted the Tenant’s $600.00 security deposit, which has accrued no interest to date. As a result, I grant the Landlord a monetary order of $1,244.48 pursuant to section 67 of the *Act*.

The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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*.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the *Act* states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d).

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the *Act* states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d).

Dated: March 4, 2019

Residential Tenancy Branch