



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for loss or damage for unpaid rent and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence and to make submissions during the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for damages, loss of rent revenue and unpaid rent in the sum of \$2,140.00?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties entered into a month-to-month tenancy commencing October 1, 2008. Rent was \$695.00 per month due on the first day of each month. During the hearing the parties agreed that the tenants moved out of the rental unit on April 28, 2009.

The landlord stated the tenants did not provide proper notice to end the tenancy; the tenants stated that the landlords were told at the start of the tenancy that they would move out at the end of April, 2009 but written notice was not provided to the landlords.



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The landlord is claiming compensation as follows:

May 2009 rent	695.00
carpet installation	80.00
drywall repair and painting	600.00
loss of rent revenue for June 2009	695.00
	2140.00

The landlord submitted a signed addendum to the tenancy agreement which requires tenants to have the carpets cleaned prior to moving out. The parties agreed that this did not occur.

The landlord stated that a section of this two year old carpet required replacement and that they used a remnant but had to pay the cost of installation. The landlord is claiming for drywall costs and stated that the tenants put holes in the walls and damaged a wall in the bathroom that was concave, as if someone had fallen into the wall. The landlord testified that he called several drywall contractors and that it took time to locate someone who would come to complete this work. The landlord stated that the delay in finding someone who could repair the drywall and painting resulted in a loss of rent revenue for the month of June.

The landlord provided photographs which show a clothes line installed from the ceiling, some garbage outside of the rental unit, stains to the carpet, wiring damage, drywall damage to one wall and what is identified as smoke stains in the living room.

The tenants testified that they viewed the rental unit in mid-September 2008 and during this viewing the previous tenant's belongings were in the unit. The tenants stated that a move-in condition inspection was not completed and that the carpet already had stains. The tenants stated that the landlord told them to put an area rug over the stains. The tenants did agree that they placed some holes in the wall and ceiling and that the landlord had given them permission to do so. The tenants testified that at the end of October 2008 a flood occurred in the rental unit and that there were further problems with water leaking down the walls, causing the paint to lift, soaking the carpet. The tenants stated they were not aware of damage to the drywall in the bathroom, other than a hole that had been cut in order to access the plumbing to the upper rental unit. The tenants stated that this hole was not repaired during their tenancy.

Analysis

Section 45 of the Act requires a tenant to provide the landlord with written notice at least one day prior to the day in the month on which the rent is due. In this case the written notice given by the tenants on April 28, 2009 would be effective May 31, 2009. Even if the tenants had previously told the landlord they would be leaving, written notice is required. Therefore, I find that the landlord is entitled to unpaid rent for the month of May, 2009 in the sum of \$695.00.

Section 23 of the Act provides:

- (1) **The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.**

- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).

- (3) **The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.**

- (4) The landlord must complete a condition inspection report in accordance with the regulations.

- (5) **Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.**

- (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

(Emphasis added)

There is no evidence before me that a move-in condition inspection was completed. In the absence of a move-in condition inspection the landlord must present a preponderance of evidence that damage occurred due to the actions of the tenants.

I find that the tenants are responsible for carpet cleaning costs, as they failed to have them professionally cleaned, as required by the addendum to the tenancy agreement. I do not accept the claim for carpet replacement costs as I find, on the balance of probabilities and in the absence of a move-in condition inspection, that the stains may have existed prior to the start of this tenancy.

Residential Tenancy Branch Policy – Responsibility for Residential Premises recognizes that tenants may place a reasonable number of ceiling hooks or nail holes in the walls. The landlord may provide the tenants with instructions for the hanging of items however; in this case there is no evidence before me that instructions were given to the tenants. Based on the evidence before me I find that the tenants did not put an unreasonable number of nail holes in the drywall. I also find that, based on the balance of probabilities, that the tenants were not responsible for excessive damage to the drywall. I have not attributed the damage to the bathroom wall to these tenants and find that a move-in condition inspection report would have provided concrete evidence of the state of the wall at the start of the tenancy. Therefore, the landlord's claim for drywall and painting costs is dismissed without leave to reapply.

I have considered the landlord's claim for loss of rent revenue for the month of June, 2009. I find that, even if I had accepted the claim for drywall costs, the landlord was required to mitigate any potential losses. Section 7 of the Act provides:

A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the landlord failed to adequately mitigate a potential loss by leaving the rental unit vacant rather than attempting to locate tenants who would have been minimally disrupted by what I have determined appears to have been a nominal amount of required drywall repair and painting.

The landlord is holding in trust a deposit plus interest in the sum of \$351.31.

As the landlord's application has merit I find that the landlord is entitled to filing fee costs.

Conclusion

I find that the landlord is entitled to unpaid rent in the sum of \$695.00 for May, 2009.



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I find that the landlord is entitled to carpet cleaning costs in the sum of \$70.00.

I have dismissed without leave to reapply the landlord's claim for compensation for June, 2009 rent.

I have dismissed without leave to reapply the balance of the landlord's claim for compensation for carpet repair, painting and drywall costs.

I find that the Landlord has established a total monetary claim of **\$815.00** comprised of May, 2009 rent, carpet cleaning costs and the \$50.00 fee paid for this application.

The landlord has not applied to retain the deposit paid by the tenants however; section 72 of the Act allows a dispute resolution officer to order that money owed by a tenant to the landlord may be deducted from any security deposit or pet damage deposit due to the tenant.

I order that the Landlord retain the deposit and interest of \$351.31 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$463.69**. This order may 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: October 01, 2009.

Dispute Resolution Officer