



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent, damage to the rental unit, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party.

Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants, and if so, the amount?
2. Retention or return of the security deposit.
3. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony of the parties, I make the following findings. The tenancy commenced in January 2008 and the tenants vacated August 20, 2009. The tenants had paid a \$400.00 security deposit for a previous tenancy agreement for a different rent unit in February 2007 that was carried forward to this tenancy agreement. The tenants were required to pay rent of \$900.00 on the 15th day of every month. The landlord did not conduct a move-in inspection report at the commencement of the tenancy. In mid-July 2009 the tenants gave notice to end the tenancy at the end of August 2009. The tenants did not pay rent on August 15, 2009.

In making this application, the landlord is seeking compensation for the following amounts:

½ month rent for August 16 – 31, 2009	\$ 450.00
Carpet cleaning	94.50
Garbage removal	18.00
Carpet replacement	962.30
Carpet installation	<u>225.23</u>
Total	\$ 1,750.03
Less: security deposit and interest	<u>(411.34)</u>
Request for Monetary Order	\$ 1,338.69

The tenants acknowledged that rent was not paid for the latter portion of August 2009 as they were under the belief the security deposit would offset the rent they owed. The tenants agreed that they owe rent for the latter half of August 2009.

The landlord testified that the tenants had dogs in the rental unit and at the end of the tenancy the carpets were torn, stained and mouldy. The living room carpet was replaced and the other carpets were cleaned after the tenants vacated. Upon enquiry, the landlord testified that the carpeting was 10 – 12 years old. The landlord testified that garbage had to be taken to the transfer station and that garbage included the old carpeting.

The landlord acknowledged he should have done a move-in inspection with the tenants but explained that there had been no damage in their previous rental unit so the landlord let the tenants move in without conducting an inspection.

The tenants acknowledged that a friend with a dog visited their rental unit frequently but that the tenants did not have dogs residing with them. The tenants testified that they borrowed a carpet cleaner at the end of the tenancy to clean the carpets but that the

carpets were torn, mouldy and stained when they moved in the rental unit. The tenants deny leaving garbage on the property with the exception of regular household garbage left for pick up at the end of the driveway and attributed any garbage in the yard to the vacant lot beside the rental property.

Analysis

At the beginning and end of every tenancy, the landlord and tenant must participate in a move-in and move-out inspection together. The landlord must offer the tenant two opportunities to participate in the inspection and if the tenant does not participate the landlord must prepare a condition inspection report without the tenant present and give the tenant a copy of the report. The landlord failed to comply with these requirements of the Act and regulations. Upon hearing from the parties, I believe both parties are now aware of their rights and obligations with respect to condition inspections.

As this is the landlord's application, the landlord has the burden to prove his claim. The landlord must show that the tenants damaged the rental unit beyond normal wear and tear, the cost to remedy the damage and that every reasonable attempt was made to mitigate the damage or loss. Burden of proof is based on the balance of probabilities. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. To award the landlord the full replacement value would give the landlord the benefit of many more years of useful life of the item at the expense of the tenant.

Residential Tenancy Policy Guideline 37 provides that carpets have a normal useful life of 10 years. Since I heard the carpeting replaced in the rental unit was at least 10 years old, I find the carpet was at the end of its useful life and the depreciated value of the carpet was approximately nil. Therefore, I do not award the landlord any compensation for replacement of the living room carpet.

I do not award the landlord garbage disposal costs as I find the majority of the cost is related to the cost of disposing of the old carpet.

As I heard the tenants had guests with dogs that visited them during their tenancy, I find the tenants obligated to clean the carpets at the end of the tenancy. The tenants did not satisfy me that they had the carpets sufficiently cleaned; whereas, the landlord provided evidence that he had the carpets cleaned after the tenancy ended. Therefore, I award the \$94.50 carpet cleaning cost to the landlord.

As the tenants remained in the rental unit after August 15, 2009, I award the landlord \$450.00 in unpaid rent as requested by the landlord and agreed by the tenants.

Since the landlord was partially successful in this application, I award the landlord one-half of the filing fee paid for this application, or \$25.00. In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Carpet cleaning	\$ 94.50
Unpaid rent	450.00
Filing fee	25.00
Less: security deposit and interest	<u>(411.34)</u>
Monetary Order	\$158.16

The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord was partially successful in this application and has been authorized to retain the tenants' security deposit and interest in partial satisfaction of the amounts awarded to the landlord. The landlord has also been provided a Monetary Order for the balance owing of \$158.16 to serve upon the tenants.

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: January 22, 2010.

Dispute Resolution Officer