



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agents, the tenant and a witness for the tenant.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit; for damage and cleaning of the rental unit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on April 1, 2006 as a six month fixed term tenancy that converted to a month to month tenancy on October 1, 2006 for a current monthly rent of \$540.00 due on the 1st of the month. A security deposit of \$250.00 was paid on April 1, 2006.

The parties acknowledge that the tenant did not provide a full month's notice to end the tenancy and that the tenant provided a potential tenant to take over the tenant's rental unit. The parties also agree that there were cigarette burns in the carpet; there were broken windows; the drapes had been changed; and the rental unit could have been cleaned more than it had been by the tenant.

The landlord testified the potential tenant to assume the tenancy choose to take another rental unit in the building as this unit was too dirty. The tenant testified that the potential tenant would not provide a statement in fear of jeopardizing his tenancy. Neither party presented any statement from this tenant nor had him attend as a witness in this hearing.

The landlord testified that the tenant changed the drapes in the rental unit contrary to Section 18 of the tenancy agreement that stipulates the painting, wallpapering and redecorating shall be done only with the prior written consent of the landlord. The

drapes the landlord had in the unit were beige in colour and the ones the tenant replaced them with are a dark brown, in contrast to the landlord's scheme for the other rental units in the building.

The landlord contends the unit required 10 hours of cleaning that included cleaning light fixtures and ceiling fans throughout; the kitchen and bathroom cabinets; stove and oven; the fridge, particularly the outside to remove nicotine stains.

The tenant testified that he had spend up to 40 hours cleaning the walls to remove nicotine from the walls and his witness testified she had completed cleaning the rest of the unit such as the kitchen cabinetry, the fridge and other areas. The witness noted that she cleaned for an hour. The tenant contends the unit was left in better shape than when he moved in and even if it required additional cleaning it should not have taken the landlord 10 hours to clean the unit.

The tenant testified the broken windows were a result of an attempted break-in into his rental unit during the tenancy and that he had indicated it had occurred to the landlord. The landlord testified that the windows appeared to be broken from the inside out and knew nothing of an attempted break in into this rental unit.

The landlord testified the tenant tried to shave out the cigarette burns and was unsuccessful so the carpet still requires replacement. The landlord testified that even though the carpets have not yet been changed the rental unit has been re-rented and the tenant currently in the unit will be moving to another unit when it is ready and that is when the landlord will change the carpet in this unit.

The landlord testified that professional carpet cleaning is required at the end of the tenancy as part of the tenancy agreement. The landlord testified that the carpets may be as old as 8 years; the drapes as old as 7 years and the unit has not likely been painted for 5 or 6 years.

The landlord sought compensation as outlined in the following table:

Description	Amount
May 2010 rent	\$540.00
Drapes	\$400.00
Cleaning (10 hrs @ \$20/hr)	\$200.00
Window Repairs	\$141.12
Rug damage	\$500.00
Rug cleaning	\$78.75
Total	\$1859.87

Analysis

Section 45 of the *Act* stipulates how a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is due under the tenancy agreement.

Despite the tenant's testimony that he provided the landlord with a potential tenant for his unit, the tenant has provided no substantiating evidence to confirm his claim that the landlords deliberately had the potential tenant move into a different rental unit. As such, I find the tenant is responsible for the payment of rent for the month of May 2010.

According to Residential Tenancy Policy Guideline #37 the useful life of carpeting is 10 years. As the landlord has indicated the carpets are as old as 8 years and he has not actually replaced the carpets in the unit and has now re-rented the unit, I find the landlord has suffered no loss as a result of the tenant's actions and therefore I find the tenant is not responsible for the replacement of the carpets. I, therefore, dismiss this portion of the landlord's claim.

The landlord cites Section 18 of the tenancy agreement contending that because that section states the tenant must have written approval to paint, wallpaper and redecorate the tenant required landlord's approval to change the drapes. The parties disagree on whether consent was given or not.

I find that Section 18 is not relevant to the landlord's position, rather Section 19 of the tenancy agreement speaks specifically to window coverings, where it states that "all windows must be covered by the tenant with appropriately styled curtains, drapes or blinds. Bedsheets, flags, blankets or other unsuitable materials must not be used to cover window areas."

I find there is nothing in Section 19 that requires the tenant to obtain written permission from the landlord to change the drapes. In addition, I do not find the landlord suffered any loss as a result of the tenant's breach of the *Act*, regulation or tenancy agreement. I, therefore dismiss this portion of the landlord's claim.

As the tenant has failed to provide any evidence that there was an attempted break-in into the rental unit, or that he reported an attempted break-in to either the police or the landlord, I accept the landlord's position that the tenant is responsible for the repair of the windows that had been broken.

While, I cannot find a section of the tenancy agreement that speaks specifically to carpet cleaning as per the landlord's testimony, I do note that Residential Tenancy Policy Guideline #1 states that "generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

As this tenancy was over three years in duration, I find the tenant is responsible for carpet steam cleaning or shampooing. In the absence of any evidence or testimony from the tenant regarding carpeting cleaning and because the landlord has not replaced any of the carpeting, I find the tenant must reimburse the landlord for costs associated with carpet cleaning.

Section 37 of the *Act* requires the tenant, when vacating a rental unit, to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The section does not stipulate that this requirement is linked in any way to the condition of the rental unit at the start of the tenancy.

As to the landlord's claim regarding cleaning the rental unit, based on both the testimony from both parties and from the photographic evidence, I find the tenant did not meet his obligations under Section 37 and the landlord's claim for additional cleaning in the amount of 10 hours at a cost of \$20.00 to be reasonable.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$984.87** comprised of \$540.00 rent owed; \$200.00 cleaning; \$141.12 window repairs; \$78.75 carpet cleaning and \$25.00 of the \$50.00 fee paid by the landlord for this application, as the landlord is only partially successful.

I order the landlord may deduct the security deposit and interest held in the amount of \$258.53 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$726.34**. This order must be served on the tenant and 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: September 14, 2010.

Dispute Resolution Officer