



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for damage to the unit, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant.

Although served with the Application for Dispute Resolution and Notice of Hearing on October 13, 2010, by registered mail, the Tenant did not appear.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

I have 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 sections 38, 67 and 72 of the *Residential Tenancy Act (the "Act")*?

Background and Evidence

This tenancy began on December 1, 2003, for a one year fixed term, which continued on a month to month basis, monthly rent was \$950.00, and a security deposit of \$475.00 was at the beginning of the tenancy. The tenancy ended on September 30, 2010.

The Landlord's claim is for the following:

Flooring and trim for 2 bedrooms and family room	\$2,411.53
Products and labour to clean interior window and tracks	\$432.00

Cleaning product and seal	\$260.00
Insurance deductible and lost insurance discount	\$1,164.00
Total	\$4,417.53

In support of her claim, the Landlord supplied evidence and gave affirmed testimony that the Tenants damaged and destroyed parts of the rental unit during the tenancy, including missing carpet and flooring, filthy, urine stained carpets, and leaving the rental unit in a filthy state which required extensive cleaning. The Landlord testified that the windows took two full days to clean as there was so much mould and dirt.

The Landlord testified that parts of the rental unit were so badly destroyed, she was compelled to file an insurance claim, which ultimately reduced her claim against the Tenants to \$4,417.53.

The Landlord is claiming for her insurance deductible and for her lost insurance discount from filing the claim.

The Landlord also seeks recovery of her filing fee paid for the Application.

Upon query, the Landlord testified that the flooring and carpets were three years old at the beginning of the tenancy, which lasted approximately seven years, making the carpets and flooring approximately ten years old at the end of the tenancy.

Analysis

Based on the testimony, evidence, photographs and a balance of probabilities, I find as follows:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

As to the Landlord's claim for flooring and carpet replacement, Residential Tenancy Policy Guideline 37 provides a useful life of carpets and tile flooring to be 10 years. Based upon the Landlord's statements as to the age of the carpets and flooring, I find that the carpets were fully depreciated and **dismiss** her claim for \$2,411.53.

I find that the Landlord has established that the Tenants damaged the rental unit to a great extent through the photos, but has not proven a specific amount of damages with receipts or invoices. Therefore I find that the Landlord has not met the third part of the burden of proving damages in relation to her claim for product and cleaning product and I **dismiss** her claim for \$150.00, \$432.00 and \$260.00.

Residential Tenancy Branch policy suggests that a dispute resolution officer may, however, award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the Landlord.

In this case, I find the Landlord has not proven a specific amount of damages with receipts, but is entitled to an award of nominal damages. I find that the Landlord was quite reasonable in her cost assessment in relation to the photographic evidence depicting the state of the rental unit and should be compensated in the amount of **\$500.00**.

As to the Landlord’s claim for reimbursement of her insurance deductible, the summary coverage page states the deductible for this property is \$500.00. I find the Landlord mitigated her loss by filing an insurance claim and is entitled to reimbursement of this amount. I therefore award the Landlord the amount of **\$500.00**.

As to the Landlord’s claim for loss of her insurance discount, I find the Residential Tenancy Act does not allow for this type of loss and **dismiss** her claim for \$164.00.

As the Landlord has been partially successful with this Application, I award her the filing fee of \$100.00.

I allow the Landlord to retain the security deposit in partial satisfaction of the claim.

Monetary Order – I find that the Landlord has established a monetary claim and is entitled to a monetary order as follows:

Nominal damages for cleaning	\$500.00
Filing Fee	\$100.00
Subtotal	<u>\$1,100.00</u>

Less security deposit and interest from Dec. 1, 2003, paid	<u>\$491.80</u>
TOTAL Monetary Order In Favour Of The Landlord	\$608.20

The Landlord is hereby granted a monetary Order in the amount of **\$608.20**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

Pursuant to Section 67 of the Act, the Landlord is granted a monetary Order for \$608.20.

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 28, 2011.

Residential Tenancy Branch