



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage to the rental unit, compensation under the Act and the tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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 monetary compensation from the Tenant?

Background and Evidence

The parties entered into a six month term tenancy agreement to begin on May 1, 2010. The monthly rent was set at \$850.00, and the Tenant paid the Landlord a security deposit of \$425.00. In December of 2010, the Tenant phoned the Agent for the Landlord and advised her she wanted to end the tenancy on December 31, 2010.

On December 23, 2010, the Agent for the Landlord inspected the rental unit and found that a bedroom carpet was quite dirty and required cleaning. The Agent told the Tenant she could have until December 30, 2010, to clean the carpet. The Agent also gave the Tenant a post-dated cheque for the return of the security deposit.

When an Agent for the Landlord next inspected the rental unit they found that the rug now had bleached out parts, as it appeared there was an attempt to clean the rug with bleach. The rug was now ruined.

The Agent was upset and attempted to put a stop payment on the security deposit cheque, however, the Tenant had already cashed it. The Agent for the Landlord also discovered that the automatic rent payment from the Tenant had gone through for January of 2011. The Agent and the Tenant along with her spouse, met at the bank to cancel the direct deposit rent payments.

An Agent for the Landlord then met with the Tenant again on January 7, 2011, to inspect the carpet. The Tenant apparently had a professional carpet cleaner do the work, however, the Agent for the Landlord testified that the carpet looked worse after the shampooing. Apparently the people cleaning the carpet had added additional bleach to the cleaning solution, in an attempt to even out the bleached stained areas.

The Agent for the Landlord at that time wanted time to consult with the main Agent for the Landlord regarding the next steps to take regarding the carpet. The Agent testified that the Tenant refused to agree to replace the carpet. The Agent informed the Tenant he would call her on Saturday to discuss what the main Agent wanted to do, after he had a chance to speak with her.

According to the testimony of the Tenant, at this time she informed the Agents for the Landlord that they could keep the January rent payment of \$850.00 in compensation for the carpet and have it replaced.

Nevertheless, it is agreed that an argument occurred between the Tenant and the main Agent for the Landlord regarding the matter of the carpet and the January rent payment on the evening of January 7, 2011.

The Agent for the Landlord present at the rental unit testified that the Tenants did not return the keys or the security fob at that time.

The Tenant testified that she returned the keys and fob at this time.

The next day, the Agent for the Landlord went to a carpet store to price out a replacement carpet and then returned to the rental unit. When the Agent entered the rental unit he was shocked to find that the hardwood floors were now all covered in long, deep scratches, and that the walls had been gouged. The stainless steel refrigerator and microwave appliances in the kitchen were also deeply scratched. The Agent took photographs of these and submitted them in evidence. It appears all the scratches were intentionally made.

The Agent testified there was no sign of forced entry into the rental unit. The Agent had a locksmith appear on an emergency call out to replace the locks to the rental unit. The main Agent for the Landlord testified that the strata has security cameras and it shows that two people entered the rental unit through the courtyard patio door around midnight. According to the testimony, the patio door is not an entry where a fob must be used.

The Tenant denies that she had anything to do with the scratches. She testified she feels sorry for what happened but testified she did not do this. The Tenant further testified that she told the Landlord she could keep the January rent payment for the carpet replacement at that time. She testified she knows that such scratches could be a criminal offence and that she would not do this over \$800.00. The Tenant asserted she had given the keys and the fob back to the Agent and did not return to the rental unit.

The Landlord claims against the Tenant as follows:

a.	Loss of rent for January and February of 2011	1,700.00
c.	Replacement of hardwood floors	2,300.00
d.	Repair damages to walls and painting	150.00
e.	Fridge and microwave replacement	895.00
f.	Cost to dispose of flooring at dump	100.00
g.	Agent's travel time	150.00
h.	Replace security fob	100.00
i.	Locksmith replace locks	206.00
j.	Replace carpet in bedroom	450.00
g.	Filing fee	100.00
	Total claimed	\$6,351.00

Analysis

Based on the above, the testimony and evidence, and a balance of probabilities, I find that the Tenant has breached section 37 of the Act and tenancy agreement by damaging the rental unit and failing to return the keys and fob to the Landlord.

I accept the evidence of the Agent that the Tenant did not return the keys or the fob to the Agent.

This is supported by the fact the Agent had to have a locksmith come in to replace the locks following the discovery of damage to the unit. As there were no signs of forced entry, and the Tenant had not returned the keys, and the parties had argued earlier that evening, I find that on a balance of probabilities, the Tenant is responsible for the scratches and gouges which occurred. It is also more likely, on a balance of probabilities, that the Tenant entered the rental unit and did the damage as claimed,

rather than a total stranger breaking into an empty unit to scratch the floors, walls and appliances for unknown reasons.

Furthermore, I find that due to the condition the rental unit was left in by the Tenant, the Landlord has suffered a loss of rent for the month of February 2011.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, here the Landlord, 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 reasonable measures to mitigate their loss.

I find the Landlord has established the damage and loss occurred, that this occurred due to a breach of the Act and tenancy agreement by the Tenant, and that the Landlord took reasonable steps to mitigate their loss.

As to the verification of the monetary claims of the Landlord there were some differences between the amounts claimed and the amounts on receipts provided. For example, the locksmith bill was \$201.60, not \$206.00.

There were no receipts provided for the labour to remove the flooring, for the labour to repair the walls and paint, or the labour to take the flooring to the dump, or the cost to replace the key fob; however, I do find the Landlord suffered a loss for performing these items due to the Tenant's breaches. Therefore, I allow the Landlord a general amount for these items in the amount \$200.00. I do not allow the claim for the Agent's travel time, as this is a cost of the Landlord.

I find the Landlord has established a total monetary claim of **\$5,899.87**, comprised of \$450.00 for the carpet replacement, \$2,300.00 to replace the hardwood floors, \$48.71 for paint, \$882.56 for the replacement appliances, \$17.00 for dump fees, \$201.60 for

the locksmith, \$200.00 for general labour/losses, \$1,700.00 in rent for January and February of 2011, and \$100.00 for the filing fee for the Application.

I allow the Landlord to retain the \$850.00 paid for January rent in partial satisfaction of the claim, and I grant the Landlord an order under section 67 for the balance due of **\$5,049.87**.

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: June 03, 2011.

Residential Tenancy Branch