



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for monetary orders for damage to or cleaning of the rental unit, for compensation under the Act and the tenancy agreement, for an order to retain the security deposit in partial satisfaction of the claim 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.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began in April of 1995.

On July 2, 2011, the Tenant passed away in the rental unit. This was discovered on July 3, 2011. The Executrix for the estate went to the rental unit on July 4, 2011.

On July 5, 2011, the Executrix spoke to an Agent for the Landlord, the building manager, and explained the circumstances and provided the Landlord with a written Notice to End Tenancy to be effective on July 31, 2011. The Agent explained to the Executrix she had learned the Tenant had passed away on July 3, 2011.

On July 31, 2011, the Executrix and another Agent for the Landlord performed an outgoing condition inspection report for the rental unit. There were several items on the report indicating that they needed cleaning, including the walls, carpet and drapery.

The Landlord is alleging they have incurred costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

The Landlord is also claiming they lost rent in the month of August due to the short notice to end tenancy given by the Tenant. The Agent for the Landlord testified that the rental unit was re-rented on August 21, 2011.

The Landlord is claiming \$72.80 for carpet cleaning, \$33.60 for drapery cleaning and \$870.59 for lost rent in August.

The Executrix for the estate of the Tenant testified that she had worked very hard to clean the rental unit. She agreed that the carpets were not cleaned and neither were the drapes.

The Executrix testified she vacuumed the carpets, but believed they were too old and should have been replaced. That is why they were not shampoo cleaned at the end of the tenancy. She agreed that the drapes were not cleaned.

The Executrix further testified that she does not believe the Landlord is entitled to any rent for August. She testified that there had been a water leak in the rental unit in June of 2011, which caused a large bubble under the paint on the wall in the rental unit. In evidence the Tenant had provided photographs of this bubble. The Tenant indicated there are also photographs of other water stains, on different walls in the rental unit.

The Executrix testified that that this was not the first leak to affect the rental unit. She testified there must be mould in the rental unit and it would have required the drywall to be removed and replaced and then painted. She testified that none of this work had been done in July before the rental unit had been vacated.

The Agent replied that she was sure that everything in the rental unit that required repairs had been done prior to the new renters moving in. The Agent was not sure how long the repairs took in the rental unit, although she testified that new renters moved in on August 21, 2011.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has breached section 37 of the Act by failing to clean the carpets and the drapes.

I allow the Landlord **\$106.40** for these claims under section 67 of the Act.

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.

I dismiss all the other claims of the Landlord in this Application for the following reasons.

I accept the testimony of both parties that after the Executrix had removed the Tenant's property from the rental unit there was work that needed to be performed inside the rental unit, which the Tenant was not responsible for.

While the Tenant suggests that drywall needed to be replaced, the Agent for the Landlord was unsure if this had occurred. Nevertheless, the evidence from both parties is that the rental unit needed a complete re-painting, at the very least.

The Agent for the Landlord could not testify as to how long work in the rental unit had taken.

I find that while this work was being performed the rental unit could not be rented to another party. This leads me to find the Landlord has failed to prove that there was a loss of rent for the period of August 1 to 21, 2011. It may be the work was done in a few days or it may have taken 21 days to complete. Regardless, the Landlord has not shown that rent was lost during this time, and I dismiss this claim.

As the Landlord has only been partially successful in this Application, I award a portion of the Application fee in the amount of **\$10.00**.

I order that the Landlord may retain **\$116.40** from the deposit and interest of **\$508.55** in full satisfaction of the claim and I order the Landlord to return to the Estate of the Tenant the balance due of **\$392.15**.

The Estate of the Tenant has been issued a monetary order, pursuant to the policy guideline to the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act and 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: November 14, 2011.

Residential Tenancy Branch