



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNSD, MNR, MNDC, OLC, FF.*

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of repairs, unpaid utilities and the filing fee and to retain the security deposit in satisfaction of his claim. The tenant applied for the return of her security deposit, for compensation pursuant to 51(2) of the *Act* and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

This dispute was originally heard on June 06, 2012. The landlord did not attend the hearing. The tenant was granted a monetary order in the amount of \$3,172.23. The landlord applied for and was granted a review hearing. The decision and order dated June 06, 2012 were suspended pending the outcome of the review hearing. The matter was subsequently heard on July 10, 2012. Both parties attended the hearing. The hearing was reconvened to be heard this date.

Issues to be decided

Is the landlord entitled to a monetary order to recover the cost of repairs, unpaid utilities and the filing fee? Is the tenant entitled to the return of her security deposit, compensation and the filing fee?

Background and Evidence

The tenancy started on March 01, 2011 and ended on March 31, 2012. The rent was \$1,250.00 due on the first day of each month. Prior to moving in, the tenant paid a security deposit of \$625.00. The rental unit is located on the upper level of a two level home. The landlord lives downstairs.

On March 01, 2011, a move in inspection was conducted in the presence of both parties and the tenant's witness. The report indicated some deficiencies and noted that the landlord had agreed to reshampoo the carpet. The tenant signed in acknowledgement that the report represented the condition of the unit at the start of the tenancy. The landlord had the carpet shampooed on March 02, 2012 and filed a copy of the invoice.

A move out inspection was also conducted in the presence of both parties. The tenant refused to sign the move out section of the report. The deficiencies identified during this inspection were that the carpet in the child's bedroom was stained, the ceiling in the hallway was ripped and that the dishwasher was inoperative. During the hearing the landlord agreed to drop his claim for the cost of repair of the dishwasher.

The parties did not agree about the condition of the carpet at the start or end of the tenancy. The tenant stated that she noticed that the carpet was stained during the move in inspection, but assumed that the stains would be gone after the landlord shampooed the carpet. The tenant did not notify the landlord about any stains on the carpet after it was shampooed but filed photographs showing stains on the carpet.

The photographs are dated March 04 and May 28, 2012. The tenant also filed undated photographs. The photographs dated May 28, 2011 (approximately three months into the tenancy) show heavy staining on the carpet in various areas. The tenant's witness testified that he was present during the move in inspection and that during that inspection, he noticed that the carpet was stained in several areas.

The tenant did not dispute that she owed the landlord \$122.77 for utilities. The tenant also agreed to drop her claim for \$120.00 for the alleged loss of use of the laundry facility.

The tenant stated that she received a notice to end tenancy for landlord's use of property and noticed that the property was up for sale and recently displayed a sold sticker. Since the purpose of the notice was for the landlord or a family member to move into the unit, the tenant is claiming compensation in the amount of two months' rent. The landlord stated that the unit is not sold and that he is currently occupying the unit.

The landlord is claiming the following:

1.	Carpet installation	\$3,253.68
3.	Shampoo Carpet	\$72.80
4.	Utilities	\$122.77
5.	Mailing costs	\$21.54
6.	Ceiling repair and labor	\$80.00
7.	Paint ceiling	\$71.64
8.	Filing fee	\$50.00
	Total	\$3,992.43

The tenant is claiming the following:

1.	Return of the security deposit	\$625.00
3.	Filing fee	\$50.00
4.	Total	\$3,175.00

Analysis

Landlord's Application:

1. Carpet installation - \$3,253.68
2. Carpet removal and disposal - \$320.00

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the parties had opposing versions of the condition of the carpet at the start and end of tenancy. However, the move in inspection report was completed and signed by both parties and I will use the details of this report in the making of this decision.

Both parties agreed that there was a stain in the child's bedroom at the end of the tenancy. The tenant stated that it was there at the start of tenancy. The move in section of the report does not mention any stains and therefore based on the inspection report and on a balance of probabilities, I find that it is more likely than not that the stain was not present at the start of tenancy. Accordingly I find that the tenant is responsible for the condition of the carpet in this room.

Regarding the condition of the carpet in the other carpeted areas of the home, the report makes no mention of stains at the start or end of tenancy. Therefore I find that the tenant is responsible only for a portion of the cost that the landlord incurred for the removal, replacement and disposal of the carpet in the child's bedroom.

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the carpet. As per this policy, the useful life of carpet is ten years. The landlord stated that the carpet was replaced in 2008 and therefore by the end of the tenancy, the carpet had six years of useful life left.

The estimated square footage of the child's bedroom is 130 square feet. The total carpet replaced was 930 square feet. Based on the age of the carpet, square footage and cost to replace the carpet, I find that the tenant is responsible for \$300.00 of the total cost of \$3,573.68, which represents the approximate prorated value of the remainder of the useful life of the carpet in the child's bedroom.

3. Shampoo carpet - \$72.80

The landlord agreed to shampoo the carpet at the start of tenancy at his own cost. Therefore I find that he is not entitled to be reimbursed.

4. Utilities - \$122.77

The tenant agreed that she owed this amount to the landlord.

5. Mailing costs - \$21.54

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the landlord's claim in the amount of \$21.54 is dismissed.

6. Ceiling repair and labour - \$80.00

7. Paint ceiling - \$71.64

Based on the inspection report, I find that the tenant is responsible for the repair to the ceiling. Accordingly, the landlord has established a claim for a total of 151.64.

8. Filing fee - \$50.00

The landlord has proven most of his claim and is therefore entitled to the filing fee.

Overall the landlord has established the following claim:

1.	Carpet installation	\$300.00
3.	Shampoo Carpet	\$0.00
4.	Utilities	\$122.77
5.	Mailing costs	\$0.00
6.	Ceiling repair and labor	\$80.00
7.	Paint ceiling	\$71.64
8.	Filing fee	\$50.00
	Total	\$624.41

Tenant's Application

1. Return of the security deposit - \$625.00

The tenant is entitled to the return of the security deposit.

2. Compensation - \$2,500.00

Pursuant to Section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property and the rental unit is not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the landlord intended in good faith to occupy the rental unit. Based on the testimony and documentary evidence of both parties, I find that the landlord has possession of the unit and currently occupies the unit for his own use.

Therefore I find that the landlord has used the unit for at least four months after the tenant moved out and continues to use it, for the purpose stated on the notice to end tenancy. Accordingly, I find that the tenant has not proven her case at this time because the landlord is currently occupying the rental unit. However, if the landlord does not use the unit for at least six months after the end of tenancy, the tenant is at liberty to apply for compensation at that time. Therefore I dismiss this portion of the tenant's application with leave to reapply.

3. Filing fee - \$50.00

The tenant has proven a portion of her claim and is therefore entitled to the recovery of the filing fee.

Overall the tenant has established a claim as follows:

1.	Return of the security deposit	\$625.00
3.	Filing fee	\$50.00
4.	Total	\$675.00

I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$50.59 which consists of difference between the tenant's established claim of \$675.00 and the landlord's established claim of \$624.41.

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the amount of \$50.59. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$50.59**.

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: August 02, 2012.

Residential Tenancy Branch