



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the unit; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit; unpaid rent or utilities; and damage or loss under the Act, regulations or tenancy agreement?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

A one-year fixed term tenancy commenced July 1, 2011 and the tenant paid a \$700.00 security deposit. The parties entered into another fixed term tenancy set to commence July 1, 2012 and expire June 30, 2013. The tenant was required to pay rent of \$1,400.00 on the 1st day of every month during the fixed term. The tenant failed to pay rent for August 2012 and on August 8, 2012 a 10 Day Notice to End Tenancy for Unpaid Rent was served upon him. The 10 Day Notice had an effective date of August 18, 2012; however, the tenant vacated the rental unit August 15, 2012.

A move-in inspection report was not prepared or provided. There was no move-out inspection conducted with the tenant.

In filing this application the landlord requested compensation of \$3,533.84 from the tenant, plus an estimate for the damaged carpet to be determined later. At the hearing the landlord requested retention of the security deposit or an award between \$500.00 and \$900.00 for damage to the carpet based upon estimates. I permitted the

amendment as I was satisfied that the tenant had been put on notice that the damaged carpeting was part of this claim and the landlord informed the tenant weeks before the hearing, via email, that quotes for replacement carpeting were between \$500.00 and \$900.00.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

Item	Amount	Landlord's reason	Tenant's response
Cleaning	200.00	Unit was "left filthy". Landlord's hired cleaner was told to clean everything but landlord determined cleaner did not clean everything to the landlord's satisfaction. Landlord and her husband spent another two weekends cleaning windows, walls, blinds.	Insufficient evidence to support this claim. Landlord's agent pressured tenant to leave two days early, which the tenant did, and when tenant enquired about returning to clean the agent told tenant he was not to return to property.
Blinds	164.64	Blinds bent and damaged. Approximately 7 years old at end of tenancy.	Tenant agreeable to paying this amount.
Blind installation	59.00	Blinds installed by landlord. Spent most of the day but claiming amount professional installer would have charged.	Insufficient evidence to support claim.
Carpet cleaning	67.20	Professional carpet cleaning cost.	Tenant agreeable to paying this amount.
Handyman Appliance Service	93.00	Tenant complained that dishwasher was leaking. Technician sent to property and determined dishwasher was not leaking. Leaking garburator had been an issue in the past. Seeking	Tenant reported water found under the sink and on the floor. Tenant was uncertain as to source of water but suspected it may be dishwasher.

		to recover cost of technician from tenant.	
Carpeting	500.00 – 900.00 (amended)	Estimated cost to replace bedroom carpeting. Stained with red substance that was still visible after treated by professional cleaner. Carpet installed in 2005.	Carpet stained with Crystal Light. Tenant believes stain is removable with appropriate treatment.
Unpaid Rent	1,400.00	Rent unpaid for August 2012.	Tenant had no choice but to enter into second fixed term tenancy agreement or face moving. Tenant evicted for unpaid rent and left August 15, 2012. Security deposit covers one-half of the month's rent.
Arbitration fee	1,400.00	Landlord seeks an award equivalent to one month's rent for having to take this dispute to arbitration.	No response required.
Process Server	\$168.45 (amended)	Landlord seeks to recover cost of serving tenant with hearing documents and evidence in person as landlord did not have tenant's new address of residence.	No response required.
Filing fee	50.00	Landlord seeks to recover filing fee paid for this application.	Landlord did not attempt to contact tenant prior to filing in an effort to resolve dispute.

Included as evidence for this proceeding were copies of the tenancy agreements, the tenant's returned cheque for August 2012; various invoices; and, photographs of the carpeting and blinds.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40.

Upon consideration of everything before me, I provide the following findings and reasons with respect to the landlord's claims against the tenant.

Cleaning –

A tenant is required to leave a rental unit “reasonably clean” at the end of the tenancy. This standard is less than being perfectly clean or impeccably clean. In the absence of a move-out inspection report; photographs; or, other corroborating evidence I find insufficient evidence it was necessary for the landlord spent another two weekends to bring the rental unit to a “reasonably clean” state after already paying a cleaner to “clean everything”. Therefore, I award the amount paid to the cleaner which was also agreed to by the tenant. The landlord is awarded \$100.00 for cleaning.

Blinds –

The Act requires that a tenant leave a rental unit undamaged at the end of a tenancy. Normal wear and tear does not constitute damage.

The landlord's photographs and undisputed testimony satisfied me that the tenant left the blinds damaged at the end of the tenancy which is a violation of the Act.

Taking into account that the blinds have an average lifespan of 10 years and were 7 years old at the end of the tenancy I find the landlord's claim for full replacement cost and installation unreasonable. In contrast, I find the tenant's offer to pay \$164.64 for replacement blinds and installation more than reasonable. Therefore, I award the landlord \$164.64 for damaged blinds.

Carpet cleaning –

This claim was supported and undisputed. The landlord is awarded \$67.20 for carpet cleaning.

Handyman Appliance Service –

Where a tenant notifies the landlord of a repair issue it is expected that the landlord will respond to the complaint in order to comply with the landlord's obligation to repair and maintain the property. I find it was the landlord's decision to send a technician to respond to the complaint of water on the floor by relying upon the tenant's untrained assumption that the water was from a leaking dishwasher. I do not hold the tenant responsible for the landlord's decision to respond to the complaint by sending a technician without further enquiry or investigation especially considering the landlord was aware that there was a previous issue with the garburator. Therefore, I dismiss this portion of the landlord's claim.

Bedroom carpeting –

I am satisfied by the photographs and the testimony that the carpeting was left with a red stain even after it was professionally cleaned. I find that the tenant's opportunity to fulfil his obligation to have the carpets cleaned was before the tenancy ended. The landlord is not obligated to permit the tenant and/or the tenant's carpet cleaner in the unit now, especially considering the unit has been re-rented, as suggested by the tenant.

Since the carpeting is damaged I find the landlord entitled to compensation for its depreciated value. I find the landlord's claim for replacement cost unreasonable given it is 7 years old and carpeting has a useful life of approximately 10 years. Therefore, I award the landlord 30% of the estimated replacement cost of \$500.00, or \$150.00.

Unpaid rent –

The Act requires a tenant to pay rent when due under the terms of their tenancy agreement. I accept that the tenant entered into two binding fixed term tenancy agreements, one that since expired, as evidenced by his signature on both documents. It is upon the person signing a legal document to read and understand the agreement they are signing. Therefore, I find the tenant was obligated to fulfill his obligation

to pay \$1,400.00 on August 1, 2012 under his tenancy agreement and under the Act, yet he failed to do so.

Failure to pay rent in accordance with his tenancy agreement and the Act lead to the issuance of a 10 Day Notice for unpaid rent which is the landlord's remedy under the Act to motivate the tenant to pay the rent or vacate so that the landlord can commence action to re-rent the unit. Upon receiving the 10 Day Notice the tenant was entitled to pay the outstanding rent within five days in order to avoid having to vacate the rental unit. The tenant chose to not pay the outstanding rent and vacate the rental unit but this does not diminish his contractual obligation. Therefore, I find the landlord entitled to recover from the tenant \$1,400.00 for unpaid rent for the month of August 2012.

Arbitration fee, filing fee and process server –

Other than the filing fee, the Act does not provide for recovery of costs associated to preparing or participating in dispute resolution proceedings. Therefore, I dismiss the landlord's request for the equivalent of one month's rent for participating in this proceeding and the amount paid to a process server for serving the tenant with hearing documents.

Given the landlord's limited success in this application I award the landlord one-half of the filing fee, or \$25.00.

Security deposit and Monetary Order –

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord and I provide the landlord with a Monetary Order in the net amount calculated as follows:

Cleaning	\$ 100.00
Blinds	164.64
Carpet cleaning	67.20
Carpet damage	150.00
Unpaid rent – August 2012	1,400.00
Filing fee	25.00
Less: security deposit	<u>(700.00)</u>
Monetary Order	\$1,206.84

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small claims) to enforce as an order of the court as necessary.

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,206.84 to serve upon the tenant and enforce as necessary.

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: December 11, 2012.

Residential Tenancy Branch