



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRESSEY PROPERTIES CORP.
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Application for Dispute Resolution and Notice of Hearing were considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on November 27, 2012, a Canada post tracking number was provided as evidence of service. The tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on July 17, 2012. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenant. The tenancy ended on October 31, 2012.

The landlord claims as follows:

a.	Rent owing	\$2,550.00
b.	Damages - Carpet cleaning & painting	\$ 437.50
c.	Filing fee	\$ 50.00
	Total claimed	\$3,037.50

Rent owing

The landlord's agent testified the tenant's rent cheques for September and October 2012, were returned by the bank for insufficient funds. The landlord's agent stated the tenant did not pay any rent for each of those months and seeks to recover \$2,400.00, in unpaid rent.

The landlord's agent testified that as a term of the tenancy agreement, the tenant is required to pay the insufficient fund fee of \$25.00 and a late payment of rent fee of \$25.00. The landlord's agent stated the tenant owed outstanding fees in the amount of \$150.00. Filed in evidence are copies of the tenancy agreement and rent ledger.

Damages

The landlord's agent testified the carpets were left stained and dirty by the tenant and they were required to be cleaned. The landlord seeks to recover the cost of carpet cleaning in the amount of \$100.00. Filed in evidence is a copy of the receipt.

The landlord's agent testified the rental unit was freshly painted when the tenant moved into the rental unit and as a result of the tenant carelessly moving her furniture the walls in living room, dining room and hallway were scratched and damaged. The landlord's agent stated the walls required repairing and painting and they seeks to recover the cost of the repairs in the amount of \$337.50.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;

- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Rent owing

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence of the landlord's agent was the tenant did not pay rent owed for September and October 2012. The tenant also failed to pay the insufficient fund fees and late fees as required by the tenancy agreement. I find the tenant has breached section 26 of the Act when they failed to pay rent and fees when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent and fees in the amount of **\$2,550.00**.

Damages

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear.

The evidence of the landlord's agent was the tenant did not remove the stains from the carpets and did not repair the damage to the walls, which was caused by the tenant carelessly moving her furniture. I find the tenant has breached section 37, when they failed to clean the carpets and repair the damage to the walls when they vacated the rental unit and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover damages in the amount of **\$437.50**.

I find that the landlord has established a total monetary claim of **\$3,037.50** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$600.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,437.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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, 2013

Residential Tenancy Branch

