



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on April 4, 2011 and ended on July 31, 2012. Rent of \$1,150.00 was payable monthly and at the outset of the tenancy the Landlord collected a security deposit of \$575.00.

The Landlord states that the Tenants failed to leave the unit clean and undamaged at the end of the tenancy and claims \$7,917.32 as follows:

- \$300.00 for the cost of drywall repair to the holes and gouges left in the bedrooms, bathroom and family room;
- \$240.00 for damaged carpet removal from the bedrooms, living room, hallway and family room;
- \$640.00 for yard work that the Tenants failed to carry out as contained in the tenancy agreement;
- \$830.00 for the cost of labour and supplies for painting the damages walls of the unit;
- \$75.56 for the cost of labour to replace a damaged motion sensor and light switch;
- \$300.00 for the cost of cleaning the unit at a rate of \$15.00 per hour for 15 hours;
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- \$88.83 for the costs of replacing the motion sensor, light switch and bent towel rack;
- \$140.00 for the cost of cleaning the chimney that the Tenants failed to clean as provided for in the tenancy agreement;
- \$169.12 for the cost of labour and supplies to replace a door handle and screens damaged by the Tenants;
- \$1,475.91 for the cost of laminate flooring to replace the damaged carpets in the hallway, living room and family room;
- \$1,822.80 for the cost of damaged carpet replacement in the bedrooms;
- \$160.00 for the cost of labour to install the laminate flooring;
- \$25.00 to move the washer and dryer back into the unit that was removed outside by the Tenants;
- \$50.00 for the cost of power washing the garage floor that the Tenants left with stains;
- \$450.00 for completion costs of laminate flooring installation;
- \$1,150.00 for the loss of rent caused by the Tenants having the unit in disrepair throughout July 2012 and leaving the unit damaged and unclean at the end of the tenancy. The Landlord was not able to advertise and show the unit during July

2012 due to the state of the unit and had the unit mostly repaired by the middle of August 2012. The Landlord advertised the unit on August 10, 2013 for an August 15, 2012 tenancy start date but was not able to secure a tenant who could move into the unit prior to the end of the month. The Landlord rented the unit at the same rent as the Tenants' rent.

Analysis

Section 5 of the Act provides that parties may not avoid or contract out of the Act or regulations and that any attempt to do so is of no effect. Section 32 of the Act provides that a tenant is responsible for maintaining reasonable cleanliness and a landlord is responsible for maintaining the repair of the unit. Further, policy guidelines indicate that a landlord is responsible for maintaining the chimney. Although the tenancy agreement includes a requirement of the Tenants to clean the chimney, I find that as this is the responsibility of the Landlord, this clause is of no effect and I dismiss this claim.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Noting the that the useful life of a carpet is 10 years old and that that the carpets in the unit were 8 years old, and based on the undisputed evidence of the Landlord that the Tenants damaged the carpets requiring their replacement with either laminate or carpet, I find that the Landlord has established an entitlement to two years loss of life of the carpet. As the total cost of the laminate and carpet is \$3,298.71, I find that the Landlord is entitled to 2/10's of this cost in the amount of **\$659.74** and I dismiss the remaining claimed amount of \$2,638.97.

Based on the undisputed evidenced of the Landlord, I find that the Landlord has substantiated the remaining costs claimed in the amount of **\$5,138.35**. I also find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of

\$5,238.35. Setting the security deposit of **\$575.00** plus zero interest off the entitlement leaves **\$4,663.35** owed by the Tenants to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$575.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$4,663.35**. If necessary, this order may be filed in the Small Claims Court 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: February 04, 2013

Residential Tenancy Branch

