



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 full satisfaction of the claim.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was 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 testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on June 18, 2013, to the tenants forwarding address, 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 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 May 1, 2012. Rent in the amount of \$750.00 was payable on the first of each month. A security deposit of \$375.00 was paid by the tenant. The tenancy ended on April 14, 2013.

The landlord testified that the tenant was served with a 10 Day Notice to End the Tenancy, when they failed to pay all rent owed of April, 2013. The landlord stated the tenant move-out of the rental, but failed to pay the balance of rent owing. The landlord seeks to recover the amount of \$150.00.

The landlord testified that the tenant caused damage to the walls when they used large nails. The landlord stated it took her one and half hours to fill and sand the holes. The landlord seeks to be compensated for her time. Filed in evidence are photographs of large nail holes in the walls.

The landlord testified that the carpet in the rental unit was stained by what appears to be some type of red colour beverage. The landlord stated that she had the carpet cleaned and seeks to recover the cost for cleaning in the amount of \$52.40. Filed in evidence is a receipt. Filed in evidence are photographs of the stained carpets.

The landlord testified that the stains on the carpet were so bad that they were unable to be removed and that the carpets will need to be replaced. The landlord stated she has provided two estimates the first estimate is in the amount of \$422.13 and the second estimate is in the amount of \$598.53 +GST. The landlord stated the carpets were approximately six years old at the end of the tenancy. Filed in evidence are photographs of the stained carpet after the carpet was cleaned. Filed in evidence are two estimates for the cost or replacing the carpet.

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, that is, a balance of probabilities.

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.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

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 was the tenant did not pay all rent owed for April 2013 and was served with a notice to end tenancy for non-payment of rent. I find the tenant has breached section 26 of the Act when they failed to pay rent 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 in the amount of **\$150.00**.

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. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the evidence of the landlord was the tenant used large nails in the walls, which caused damage to the walls. The photographs submitted into evidence supports the use of large nails, causing damage. Therefore, I find the tenant breached the Act, when they failed to repair the damage prior to vacating the unit and the breached caused the landlord to suffer a loss.

The evidence of the landlord was that it took her one and a half hours to fill and sand the holes. I find the amount of time claim reasonable and I find a reasonable hourly rate would be \$20.00. Therefore, I grant the landlord compensation for repairing the walls in the amount of **\$30.00**.

The evidence of the landlord was the tenant failed to clean the carpets at the end of the tenancy and left what appeared to be stains from a red beverage that had been spit on the carpet. The photographs submitted into evidence supports that the carpet was required to be cleaned. Therefore, I find the tenant breach the Act, when they failed to

clean the carpets at the end of the tenancy and this breached caused the landlord to suffer a loss. Therefore, I grant the landlord compensation for the cost of having the carpets cleaned in the amount of **\$52.50**.

The evidence of the landlord was that the tenant damaged the carpets as the stains in the carpets did not come out. The photographs submitted into evidence support that while the carpets appear to be cleaner, the red stains still appear to be quite visible.

Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. As, I have determined that the carpet had a useful life span of 10 years, and the carpet was six years old. I find the landlord is entitled to the depreciated value of forty percent, using the lower of the two estimates. Therefore, I find the landlord is entitled to compensation for the cost of replacing the carpets in the amount of **\$168.86**.

In this case the landlord's total established monetary claim was \$401.00. This award exceeds the tenant's security deposit of \$375.00. However, the landlord was not seeking a monetary order for the balance due. As a result, I order the landlord to retain the security deposit in full satisfaction of the claim.

Conclusion

The landlord is granted a monetary and may keep the security deposit in full satisfaction of the claim.

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: July 10, 2013

Residential Tenancy Branch