



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELLER WILLIAMS VALLEY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC

Preliminary Issues

This application was initially reviewed through the Direct Request process on August 26, 2013, and was adjourned to a participatory hearing scheduled for October 9, 2013. By the time the interim decision was received by the Landlord the Tenants had vacated the property and the female Tenant, S.B., provided the Landlord with a service address for herself. No service address was provided for the male Tenant, T.W.

The Landlord regained possession of the rental unit on August 31, 2013. Therefore, they withdrew their request for an Order of Possession.

The Landlord testified that an amended application and additional evidence package was served to S.B. and the *Residential Tenancy Branch (RTB)* on September 20, 2013, seeking additional compensation for damage to the unit and for cleaning up the mess left behind. Canada Post tracking receipts were provided in the Landlord's evidence.

Based on the testimony of the Landlord, I find that the Female Tenant, S.B. is deemed served with the Notice of Dispute Resolution Proceeding documents and the amended application and evidence on September 25, 2013, five days after they were mailed, in accordance with section 90 of the Act.

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*.

In this case only one of the two Tenants has been served with the Notice of Dispute Resolution documents. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the female Tenant who has been properly served with Notice of this Proceeding. As the Tenant T.W. has not been properly served the Application for Dispute Resolution as required, the monetary claim against the male Tenant is dismissed without leave to reapply.

Upon review of the amended application I accept that the Landlord served the female Tenant and the RTB with the application showing an increased claim amount of

\$2,279.05 and additional comments in the details of dispute which clearly indicate the additional claim was for “damage & mess”.

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement or for damage to the unit site or property* when completing the amended application, as they clearly indicated their intention of seeking to recover those costs. Therefore, I amend their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 19, 2013, and amended on September 20, 2013, by the Landlord. The Landlord sought to obtain a Monetary Order for: damage to the unit, site, or property; for unpaid rent; to keep the security and pet deposits; and for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The Landlord appeared at the teleconference hearing; however, no one on behalf of the Tenants appeared, despite the female Tenant being served notice of this proceeding. As service has been proven to be conducted in accordance with the Act, I proceeded in the Tenants' absence.

Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

Background and Evidence

The Landlord testified that the Tenants entered into a fixed term tenancy that began on May 1, 2013 and was set to end on May 31, 2014. Rent was payable on the first of each month in the amount of \$1,500.00 and on April 15, 2013 the Tenants paid \$750.00 as the security deposit and \$750.00 as the pet deposit. The parties attended the move in inspection on April 29, 2013 and the female Tenant attended the move out inspection on August 31, 2013.

Upon completion of the move out condition inspection form the Tenant signed agreeing to deductions from her deposit to pay for the balance owing for August rent, carpet cleaning, and wall repairs. The Tenant did not return any of the keys prior to leaving.

The Landlord submitted a copy of the 10 Day Notice which was personally served to the Tenants on August 6, 2013, indicating \$1,500.00 was outstanding rent that was due on August 1, 2013. The Tenant's made a partial payment of \$750.00 on August 12, 2013, leaving a balance owing of \$750.00.

In addition to unpaid rent the Landlord is seeking damages which consist of: \$89.25 for locksmith charges; \$217.50 carpet cleaning; 50% of the cable bill which is \$75.04; \$105.00 wall repairs; \$32.79 towel rack; \$320.00 cleaning costs; plus \$689.47 which is an estimate to replace the carpet.

The Landlord stated that all repairs and cleaning have been completed except for the carpet replacement. She pointed to the photographs in her evidence which show a stain that was left on the carpet. The claim is based on an estimate and the work has not been done. She could not provide the actual age of the carpet and did not know if quotes were sought to color patch or cut and patch the area instead of replacing the full carpet.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their documentary evidence.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement.

In this case the Tenants failed to pay the August 1, 2013, rent in accordance with the tenancy agreement, paying only half of the rent in the amount of \$750.00 on August 12, 2013. Accordingly, I award the Landlord unpaid rent for August 2013 in the amount of **\$750.00**.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

As per the foregoing I find the Landlord has met the burden of proof and I award them damages for: \$217.50 carpet cleaning; \$75.04 cable bill; \$105.00 wall repairs; \$32.79 towel rack; \$320.00 cleaning costs which total **\$750.33**

Upon review of the claim for carpet replacement, I accept that the carpet was left with a stain on it. That being said, 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 necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

In this case the age of the carpet is unknown and there is no evidence to determine if the carpet could be repaired rather than replaced. Based on the pictures which show the style and color of the carpet it appears to be from the mid to late 90's which would make the carpet more than fifteen years old. The normal useful life of a carpet is ten years. That being said, the evidence indicates the carpet was in excellent condition at the start of the tenancy.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the above, I find that the Landlord is entitled to nominal damages for the stain that was left on the carpet in the amount of **\$50.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security and pet deposits plus interest as follows:

Unpaid August 2013 rent	\$ 750.00
Damages & repairs	750.33
Nominal damages for carpet	<u>50.00</u>
SUBTOTAL	\$1,550.33
LESS: Pet Deposit \$750.00 + Interest 0.00	-750.00
LESS: Security Deposit \$750.00 + Interest 0.00	<u>-750.00</u>
Offset amount due to the Landlord	<u>\$ 50.33</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$50.33**. This Order is legally binding and must be served upon the Tenant.

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: October 11, 2013

Residential Tenancy Branch

