



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, 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 to recover the cost of filing their application from the tenants.

Preliminary and Procedural matters

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each 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 served on the tenant (AQ) by personal service on June 24, 2013. The tenant did not appear, I find the tenant (AQ) has been duly served in accordance with the Act.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served on the tenant (SQ) and (AC) by leaving a copy with the tenant (AQ) on June 24, 2013. The tenants did not appear.

Under section 89(1) of the Residential Tenancy Act, an application for dispute resolution, must be given in one of the following ways if the person is a tenant, by leaving a copy with the person or by sending a copy by registered mail to a forwarding address provided by the tenant.

As a result, I find the landlord has not served the tenants (SQ) and (AC) in a method approved of under section 89(1) of the Act. Therefore, the landlord's application against the tenant (SQ) and (AC) is dismissed with leave to reapply. This hearing proceeded against the tenant (AQ).

On May 8, 2013, the parties were at a dispute resolution hearing. At the hearing the arbitrator heard and a decision was made on the landlord claim for utilities, liquidated damages and overholding. Those matters were dismissed without leave to reapply.

On June 20, 2013, the landlord filed a new application for dispute resolution, with a claim for compensation for damages. In their claim the landlord has reapplied on issues which were previously heard and dismissed. As a result, I find the legal principal of Res judicata would apply. I cannot grant the landlord's request to hear the issues of unpaid utilities, liquidated damages and overholding, as these matters were already heard and decided upon at the hearing of May 8, 2013.

This hearing proceeded on the landlord's claim for damages to the unit.

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 monetary compensation for damages to the rental unit?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on February 1, 2013. Rent in the amount of \$1,500.00 was payable on the first of each month. A security deposit of \$750.00 was paid by the tenants. The tenancy ended on May 1, 2013. A move-in and move-out condition inspection report were completed in accordance with the Act. Filed in evidence is a copy of the report.

The landlord claims as follows:

a.	Suite Cleaning & Capet Cleaning	\$ 300.00
b.	Carpet Spot Removal and repair	\$ 650.00
c.	2 Blinds replaced and installed	\$ 66.90
d.	Filing fee	\$ 50.00
	Total claimed	\$ 1,066.90

Suite Cleaning & Carpet Cleaning

The landlord testified at the move out condition inspection the tenants left the rental unit dirty and the carpets unclean. The landlord stated that the tenant (DC) agreed that the report fairly represented the condition of the rental unit at the end of the tenancy. The landlord stated that the tenant (DC) agreed to the amount of \$150.00 for suite cleaning and \$150.00, for carpet cleaning. Filed in evidence is a copy of the Condition inspection report.

The landlord stated that she had the carpets cleaned and seeks to recover the amount of \$157.50.

Carpet Spot Removal and repair

The landlord stated that after the initial carpet cleaning they discover that there was damage to the carpet and that this was not discovered at the move-out condition inspection because the damage was hidden by dirt.

The landlord stated that there were bleached spots, red nail polish and marks from permanent markers and that the stains were so deep that they had to do a deep flush to remove the stains. The landlord stated in order to mitigate she had the spots on the carpet dye, colour removed and had them apply a stain treatment. The landlord stated the carpet was in good condition at the start of the tenancy. Filed in evidence is a photograph of the carpet. Filed in evidence is an invoice with a description of services provided.

2 Blinds replaced and installed

The landlord stated that the tenants broke two blinds and it cost her \$36.90 to have the blinds replaced. The landlord stated that it took them one hour and fifteen minutes to remove the old blinds and install the new blinds and seek compensation at the rate of \$25.00 per hours. Filed in evidence is a receipt for blinds.

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 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

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 37 of the Act states that the tenants are 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.

Section 21 of the Act States a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Suite Cleaning & Carpet Cleaning

In this case, the condition inspection report indicated the tenants did not clean the rental unit or the carpets. In the report the tenant (CA) agreed on behalf of the tenants to the amount of \$150.00 for suite cleaning and \$150.00 for carpet cleaning. While the landlord seek \$157.50 for the carpet cleaning, I find that the parties had previous agreed to the amount of \$150.00 for carpet cleaning. Therefore, the landlord is granted compensation for suite cleaning and carpet cleaning in the total amount of \$ **\$300.00**.

Carpet Spot Removal and repair

The undisputed evidence of the landlord was that after she had the carpets professional cleaned it was discovered that the carpets were heavily stained and that there were bleach spots and red spots that were undetectable as they were covered in dirt. The evidence was that they had to apply a stain treatment and dye portions of the carpet to cover up the damage. The photograph and invoice filed as evidence support that stain treatment was required, and that colour removal and dye repaired were required. As a result, I find that the landlord had provided a preponderance amount of evidence to the contrary.

I find the tenant breached section 37 of the Act, when they failed to have the carpets repaired at the end of the tenancy and the landlord suffered a loss. Therefore, I find the landlord is entitled to compensation in the amount of **\$650.00**.

2 Blinds replaced and installed

In this case, the move-out condition inspection report indicated that the tenant broke blinds in the rental unit. I find the tenants breach section 37 of the Act, when they failed to repair the broken blinds at the end of the tenancy and this caused a loss to the landlord. Therefore, I find the landlord is entitled to compensation for the cost of the blinds in the amount of **\$36.90**.

The landlord is seeking an amount of \$25.00 per hour for the removal and installation of the new blinds. I find the hourly rate high; therefore, I will allow the landlord compensation for the removal and installation of blinds in the total amount of **\$20.00**.

I find that the landlord has established a total monetary claim of **\$1,056.90** comprised of the above described amounts and the \$50.00 fee paid for this application. I grant the landlord a formal order under section 67 of the Act.

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

Conclusion

The landlord application against the tenants (SQ) and (AC) is dismissed with leave to reapply.

The landlord is granted a monetary order under section 67 of the Act against the tenant (AQ).

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 1, 2013

Residential Tenancy Branch

