



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKWOOD MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation under the Act and the tenancy agreement, for damage to and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified they served the Tenant with the Notice of Hearing and Application in person on November 14, 2013. Despite this the Tenant did not appear at the hearing. I find the Tenant has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This month to month tenancy began on April 1, 2013, with the parties entering into a standard form, written tenancy agreement. The monthly rent was \$700.00, payable on the first day of the month and the Tenant paid a security deposit of \$350.00 on March 15, 2013. A copy of a condition inspection report was entered in evidence which indicated the Tenant had participated in the incoming report at the start of the tenancy.

The Agent for the Landlord testified that the Tenant did not pay the rent for the month of October 2013. The Agent testified she served the Tenant with a 10 day Notice to End Tenancy for unpaid rent, by posting it to the door of the rental unit, on October 2, 2013.

The Agent testified the Tenant did not pay the rent or dispute the Notice to End Tenancy.

A few days later, the Agent noticed the sliding patio glass door had been left open a slight amount for a couple of days. Suspecting the Tenant may have moved, the Agent testified she gave the Tenant a notice to enter the rental unit on October 6, 2013, by posting it to the door.

The Agent for the Landlord testified that on October 9, 2013, the Agent entered the rental unit and found that the Tenant had moved her clothing and personal items, but left behind some garbage and a few items. The Agent testified she contacted the Tenant by phone and was informed by the Tenant that she would not be returning to the rental unit and did not care what was done with anything left behind. The Agent for the Landlord treated the rental unit as abandoned and completed an outgoing condition inspection report. The Agent testified that the Tenant did not provide her with a forwarding address.

The Landlord claims the Tenant left the rental unit damaged and did not clean the rental unit to a reasonable standard.

The Landlord claims as follows:

a.	Unpaid rent for October 2013	700.00
b.	Carpet replacement	999.01
c.	Cleaning	120.00
d.	Garbage removal including dump fees	100.00
e.	Filing fee	50.00
	Total claimed	\$1,969.01

The Agent for the Landlord testified the Tenant did not pay rent for October of 2013.

The Agent testified that the Tenant had damaged the carpet in the living room and bedroom with cigarette burns. The Agent testified there were many cigarette burns in the carpets in these areas, that the rental unit was non-smoking, and that the burns were not there when the Tenant moved in. The Agent submitted an invoice for the removal, dumping and installation of new carpet in the rental unit. The invoice was for \$1,998.02. The Agent testified they were only requesting \$999.01 for the carpet due to the previous wear and tear and the age of the carpet. The Agent testified it was two years old at the end of the tenancy.

The Agent testified that the kitchen countertop, stove, oven, refrigerator and the drapes had not been cleaned by the Tenant. In evidence the Agent produced an invoice for six hours of work at \$20.00 per hour for this work, totaling \$120.00. The Landlord also entered into evidence an invoice for garbage removal in the amount of \$100.00, which included dump fees.

The Agent testified that the rental unit had been supplied to the Tenant in clean condition. The condition inspection report has been submitted in evidence.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

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

I find the Tenant did not pay rent for October of 2013, and breached section 26 of the *Act* by failing to do so.

I also find the Tenant breached section 37 of the *Act* by failing to clean the rental unit to a reasonable standard, and caused damages to the carpet beyond normal wear and tear. I accept the undisputed testimony and evidence of the Landlord and the Agent for the Landlord in this finding.

Section 7 of the *Act* states:

- (1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

I find the Tenant must compensate the Landlord for the losses and damage that occurred due to the breaches of the Tenant.

Policy guideline 40 sets out that,

“When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”

[Reproduced as written.]

In this instance, the Landlord has already applied depreciation to the carpet in excess of what was required under the above policy guideline. Therefore, I do not reduce the amount claimed for the carpet.

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.

[Reproduced as written.]

I find that the Landlord has established a total monetary claim of **\$1,969.01** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposit of **\$350.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$1,619.01**.

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

Conclusion

The Tenant breached the Act and tenancy agreement by failing to pay rent when due, and by failing to return the rental unit to the Landlord in a reasonably clean and undamaged state. The Landlord is allowed a monetary award and may keep the security deposit in partial satisfaction of the claim. The Landlord is granted a monetary order for the balance due of \$1,619.01

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 19, 2014

Residential Tenancy Branch

