



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNSD

For the landlords – MND, MNR, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant seeks a Monetary Order to recover double the security deposit. The landlords seeks an a Monetary Order for unpaid rent, A Monetary Order for damage to the unit, site or property, and to recover the filing fee from the tenant for the cost of this application..

The tenant, the tenants advocate and the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for double the security deposit?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The parties agree that this tenancy started on September 01, 2011 for a month to month tenancy. Rent for this unit was \$750.00 increasing to \$785.00 on February 01, 2013. The tenant paid a security deposit of \$325.00 on August 18, 2011. No condition inspection reports were completed by the landlords at the start or end of the tenancy. The tenancy vacated the rental unit on the effective date of a 10 Day Notice to End Tenancy for unpaid rent of September 16, 2013. The tenant provided a forwarding address in writing on October 16, 2013.

The tenant testifies that the landlords have not returned the tenant's security deposit within 15 days of the date the landlords received the tenants forwarding address in writing and request to have the security deposit returned to the tenant. The tenant testifies that the landlord has not filed an application to keep all or part of the security deposit. The tenant testifies that she has not given the landlord written permission to keep all or part of the security deposit. The tenant seeks to recover double the security deposit to an amount of \$650.00.

The landlords dispute the tenants claim and testify that the tenant's security deposit was used towards the unpaid rent for September and damage to the carpet in the unit. The landlords agree that they have not filed an application to keep the security deposit.

The landlord HR testifies that the tenant was served a 10 Day Notice to End Tenancy for unpaid rent as the amount of \$285.00 was outstanding for September, 2013. The landlords were hoping the tenant would pay this outstanding rent but instead the landlords heard from a neighbour of the tenant that the tenant was moving from the rental unit. The female landlord BR went to the unit and spoke to the tenant. The tenant was in the process of cleaning the unit. The landlord BR saw a vomit stain on the carpet in the unit and discussed this with the tenant stating that the landlord hoped it could be removed by cleaning.

The landlord HR testifies that the stain was still evident after the tenant moved out and the landlords engaged a carpet cleaner to clean the carpets. The carpet cleaner came out on September 18, 2013 and attempted to remove the staining. The carpet cleaner informed the landlord that due to acid contained in vomit the stain could not be removed and it is likely that the odour will come back through the carpet. The landlords paid \$89.25 for the carpet cleaning. The landlord HR testifies that the stain could not be removed. The carpets were brand new at the start of the tenancy and would have to be replaced. The landlord HR testifies that this has not yet been done as the landlords are awaiting the outcome of this hearing. The landlords refer to their documentary evidence of the original carpet cleaning invoice. As this invoice also contained new linoleum the landlords seek only the cost of the carpets and underlay, supplies and fitting costs to an about of \$1,312.37.

The tenant disputes the landlords claim for carpet cleaning and new carpets. The tenant's advocate testifies that the landlords have provided no evidence that the carpet was stained. No inspection reports were completed and no other evidence has been provided to show a vomit stain. The tenant agrees that she did speak to the landlord BR about a stain on the carpet. The tenant testifies that she removed this staining with a spray cleaner and then vacuumed the carpets. The tenant agrees that there was a small vomit stain left on the carpets.

The tenant disputes the landlords claim for unpaid rent for September. The tenant testifies that she vacated the unit in the middle of September and therefore should not owe rent for the remainder of the month.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim to recover double the security deposit; I refer the Parties to s. 38(1) of the *Act* that states a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants

forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address in writing on October 16, 2013. As a result, the landlords had until October 31, 2013 to return the tenant's security deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the security deposit and have not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit to an amount of **\$650.00** pursuant to section 38(6)(b) of the *Act*.

With regard to the landlords claim for unpaid rent; when the landlord elects to end the tenancy for unpaid rent, the landlords are entitled to recover the rent arrears owed by the tenant for the entire month. Consequently, I am satisfied that the tenant failed to pay the outstanding rent for September, 2013 of **\$285.00** and the landlords are entitled to a Monetary Order to recover that amount pursuant to s. 67 of the *Act*.

With regard to the landlords claim for carpet cleaning; the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. With this in mind the tenant agrees that there was a vomit stain left on the carpet after the tenant had tried to remove the stain. The tenant agrees that she did not clean the carpets but only sprayed the stain and vacuumed the carpets. Consequently I am satisfied with the evidence before me that the landlords are entitled to recover the amount of **\$89.25** from the tenant for carpet cleaning pursuant to s. 67 of the *Act*.

With regard to the landlords claim for replacement carpets; in this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I find the tenant agrees there was a vomit stain left on the carpet at the end of the tenancy. Therefore the landlords have proven the existence of the stain. As the carpets were new at the start of the tenancy the landlords have also established that this staining occurred during the tenancy and is therefore the responsibility of the tenant. The landlords have shown that they have mitigated the loss by attempting to clean the stain prior to considering replacement carpets. The landlords have not yet had the carpets replaced but have provided the invoice showing the actual cost for the carpets in 2011 when they were first laid.

I am satisfied therefore, despite the tenant's arguments to the contrary, that the landlords have met the burden of proof in this matter. However, as the carpets are two years old there will be an amount deducted for depreciation of the carpets for this period. Carpets have a useful life of 10 years and therefore I must therefore limit the landlords claim accordingly. Furthermore I find that the landlords stated during the hearing that the invoice provided for the original carpets also included an amount for linoleum flooring. I am unable to distinguish from this invoice which sections are for the supplies to fit the carpet and which are for the linoleum and how much labour costs were incurred for the carpet fitting and which are for the linoleum. I therefore must limit the landlords claim and deduct a percentage of the original invoice. The landlords have calculated this at \$201.60 for the underpad, \$448.92 for the carpet, \$161.85 for the supplies and \$500.00 for the labour. The original receipt shows \$433.40 for the carpet, \$201.60 for the underpad, \$161.85 for supplies and \$805.16 for labour with \$246.12 for applicable taxes.

Having reviewed the original receipt I will adjust the landlords claim accordingly. I therefore deduct 20 percent of the carpet and underlay costs for depreciation and will allow the landlord to claim

\$346.72 plus tax of \$41.60 for the carpets

\$161.28 plus tax of \$19.35 for the underpad

\$80.92 plus tax of \$9.71 for supplies

\$402.58 plus tax of \$48.30 for labour

The total amount due to the landlord for replacement carpet costs is limited to

\$1,110.46.

As the landlords have been largely successful with their claim I find the landlords are entitled to recover the **\$50.00** filing fee pursuant to s. 72(1) of the *Act*.

As both parties are entitled to a monetary award I have offset the tenant's monetary award against that of the landlords. Sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep **\$325.00** from the tenant's security deposit plus the doubling provision of **\$325.00** to compensate them for the damages and unpaid rent as follows:

Unpaid rent for September, 2013	\$285.00
Carpet Cleaning	\$89.25
Replacement carpets	\$1,110.46
Filing fee	\$50.00
Double the security deposit for the tenant	(-\$650.00)
Total amount due to the landlords	\$884.71

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. The tenant is entitled to a monetary award of **\$650.00**. This amount has been offset against the landlord's monetary award.

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$884.71**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court 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: March 05, 2014

Residential Tenancy Branch

