



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application. During the hearing the landlord's agent (the landlord) withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on February 14, 2014. Canada Post tracking numbers were provided by the landlord's agent by way of oral testimony. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this tenancy started on July 01, 2012 for a fixed term of one year. The tenancy then reverted to a month to month tenancy. Rent for this unit was \$795.00 plus \$10.00 for storage each month. The rent was increased to \$805.00 plus \$10.00 for storage on October 01, 2013. Rent was due on the 1st of each month in advance. The tenant paid a security deposit of \$397.50 at the start of the tenancy which is held in trust by the landlord. A copy of the tenancy agreement signed by the parties has been provided in documentary evidence. The tenant provided a forwarding address in writing to the landlord prior to vacating the rental unit.

The landlord testifies that the tenant attended the move in condition inspection of the unit at the start of the tenancy. However, at the end of the tenancy the tenant failed to attend the move out condition inspection despite two opportunities being given to the tenant to attend. The landlord has provided a copy of the Final Opportunity for Inspection Notice in documentary evidence.

The landlord testified that the tenant failed to leave the rental unit clean at the end of the tenancy. The building manager cleaned the tenant's suite. This cleaning took just under 23 hours to clean. The building manager is paid \$12.00 an hour. The landlord therefore seeks to recover the amount of \$273.00 to clean the unit plus an additional amount of \$38.00 for the supplies used. The landlord has provided an invoice from the building manager in documentary evidence.

The landlord testified that the tenant failed to have the carpets cleaned at the end of the tenancy. The carpets were left heavily soiled and had to be professional cleaned at a cost of \$178.50. The landlord has provided an invoice for this work in documentary evidence which indicates that the carpets were heavily soiled.

The landlord testified that the carpet and the linoleum in the bathroom had cigarette burns on them. The carpet was repaired at a cost of \$65.00 and an invoice has been provided in documentary evidence. The repair to the linoleum was originally estimated at \$65.00; however, the actual charge was \$200.00 as the linoleum had to be replaced in the bathroom. The landlord

has requested to amend their application to recover the amount of \$140.00 for this work. As the linoleum was three years old the landlord has been deducted \$60.00 for depreciation. An invoice has been provided in documentary evidence for this work.

The landlord testified that the tenant failed to leave the drapes clean in the living room and bedroom. Three sets of drapes had to be cleaned at a cost of \$42.00. The landlord has provided an invoice for this work in documentary evidence.

The landlord has provided a copy of the move in and move out condition inspection reports in documentary evidence. These reports detail the condition the unit was in at the start and end of the tenancy.

The landlord testified that the tenant owed an amount of \$10.00 for rent for January, 2014. A copy of the tenant's rent ledger showing this amount was owed has been provided in documentary evidence.

The landlord seeks an Order to keep the security deposit of \$397.50 in partial satisfaction of this claim. The landlord seeks a Monetary Order to recover the balance of the monetary claim and the \$50.00 filing fee.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me.

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;

- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

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.

I am satisfied from the evidence before me that the tenant failed to leave the rental unit to a reasonable standard of cleanliness pursuant to s. 32 of the *Act*. I find the tenant failed to have the carpets and drapes cleaned as required after a tenancy of one year. I further find the carpet and linoleum were left damaged with cigarette burns. Consequently, it is my decision that the landlord is entitled to recover the amount of \$734.00 for damages and cleaning as follows:

Cleaning costs - \$311.00

Carpet cleaning - \$178.50

Carpet repair - \$62.50

Linoleum replacement - \$140.00

Drape cleaning - \$42.00.

With regard to the landlords claim for unpaid rent; I am satisfied that the tenant owes an outstanding amount of \$10.00 in rent for January, 2014 as documented on the rent ledger. The landlord is therefore entitled to recover this amount from the tenant.

I ORDER the landlord to keep the tenant's security deposit of \$397.50 pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's monetary award.

I find the landlord is entitled to recover the filing fee of \$50.00 pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Damages and cleaning	\$734.00
Unpaid rent	\$10.00
Filing fee	\$50.00
Less security deposit	(-\$397.50)
Total amount due to the landlord	\$396.50

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$396.50**. 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: May 28, 2014

Residential Tenancy Branch

