



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT (2001) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

- d) To refund the security deposit pursuant to section 38; and
- e) To recover the filing fee pursuant to section 72.

SERVICE

Both parties attended. The landlord gave sworn testimony that they served the Application for Dispute Resolution (which they filed on March 18) personally on the tenant on April 29, after sending it by registered mail on March 19th and having it returned; the tenant agreed he received it personally and pointed out that the landlord had mistakenly not put the complete forwarding address on the first attempt at service. The landlord agreed they received the tenants' application filed on March 18, 2014 by registered mail. The landlord gave evidence they served additional evidence on the tenant by registered mail on May 29, 2014; it was verified online that delivery was attempted and a Notice left on May 29, 2014 but the tenant failed to pick it up; he said he was out of the country and it should have been served to his office address which he had provided as his forwarding address. The landlord said the Application had been returned when sent to that address so they sent it to his home address. I find that the documents were served according to section 89 of the Act. Although the evidence went to the tenants' home address, I find this is a valid address and the landlord had good reason to use this address as it appeared the forwarding address provided by the tenant was not good for registered delivery. The landlord legally served the evidence

according to the Act for the purposes of this hearing, although the tenant was out of the country.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to retain the security deposit to offset the amount owing and to recover the filing fee?

Has the tenant proved on the balance of probabilities that they are entitled to refund of their security deposit (and doubled under section 38 of the Act) and to recover their filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on June 1, 2012, that monthly rent was \$1300 and a security deposit of \$650 was paid in 2012. The landlords said that the tenant left the premises in a dirty condition. They claim:

\$1100 to replace carpet in living and dining rooms

\$504 for cleaning.

They waive \$50 for paint patching and repairing.

The premises were a two bedroom condo and it is undisputed that although the condo was a little over two years old, these tenants were the first occupants. The landlord said when they went to inspect in March, they were shocked at the dirty condition. They scheduled a 4:30 p.m. inspection on March 1, when they came at 3 p.m., they called the tenant and reported the problems and he promised to clean it; the parties agreed to meet between 7-8p.m. that evening but nothing had been done when the landlord attended again. The landlord said they had to get a cleaning service on Sunday and the new tenants had to wait until Monday, June 3 to move in; however the landlord suffered no rental loss as the new tenants were gracious about the situation. A representative of the carpet cleaning company and one from the house cleaner service attended the hearing to give evidence that the carpets were torn somewhat and very badly stained and the place was extremely dirty necessitating a longer (12 hour) cleaning. The house cleaner noted there were food items left in the cupboards and refrigerator, marks over walls and doors and the bathrooms were filthy. She said she has been in the business for 6 years and this unit was in much worse condition than normal. A condition inspection report is in evidence also and a number of photographs.

The tenant disputed the claim. He said he cleaned the place and although there were some stains on the carpet, it was reasonable wear and tear and he should not be responsible for carpet replacement. He objected that the carpet cleaner contacted the landlord as he was the client who paid him. The carpet cleaner said he does work in many condo buildings and he considers it is his responsibility to notify owners when he cannot clean carpets properly.

The tenant requests the return of his security deposit and states it should be doubled as the landlord failed in their responsibility to serve him with the Application within the time limits at the forwarding address he provided. He said they also failed to inspect the premises with him and jointly complete the Condition Inspection Report.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused damage to the carpets and left the unit in a very dirty condition that required extraordinary cleaning. I find the landlords' evidence more credible and prefer it to the tenants' as it is well supported by the two witnesses who attended who were able to detail very well the condition of the premises. I find it inconsistent that the tenant cleaned the unit since food was left in the cupboards and refrigerator. The landlords' evidence is also well supported by the condition inspection report which shows no problems at move-in and many rooms marked with "dirty" or "filthy" on move-out. As the carpet was two years old at move-out and the Residential Tenancy Guidelines provide for a useful life of 10 years for carpets which is designed to account for reasonable wear and tear in rented premises, I find the landlord entitled to recover 80% of the \$1,100 replacement cost for the living and dining room carpet or \$880. Although the landlord provided no invoice and has not replaced the carpet yet, I find his experience and quote from the company credible as they manage many similar condos and have done this work a number of times.

The tenant objected to the high cost of cleaning. However, I find the cleaner's evidence credible of the amount of work required. I also find he had opportunities for inspection and did not clean the unit even after the manager allowing extra move-out time for him to do so. The tenant had the option of cleaning themselves or hiring a company to do so; since I find the weight of the evidence is that they left the unit in a very dirty

condition, I find the landlord entitled to recover \$504 which they paid for cleaning services to a third party.

In respect to the security deposit, I find it has not been refunded. The undisputed evidence is that the tenant vacated on March 1, 2014 and provided his forwarding address in writing on March 11, 2014. I find the landlord filed their Application to claim against the deposit on March 13. Section 38 of the Act provides that the landlord has 15 days from the later of vacancy and provision of the forwarding address to either repay the deposit or file an Application to claim against it. I find the landlord here filed within the 15 day timeline and therefore the doubling provisions in section 38 do not apply. I find the tenant's security deposit will be used to offset the amount owing to the landlord for damages.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Carpet replacement allowance	880.00
Cleaning cost	504.00
Filing fee	50.00
Less security deposit (no interest 2012-14)	-650.00
Monetary Order to landlord	784.00

I dismiss the Application of the tenant and find they are not entitled to recover their filing fee.

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: June 10, 2014

Residential Tenancy Branch

