



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND OPC RR MNSD FF MT

Introduction:

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

- a) A monetary order pursuant to Section 67 for damage to the property;
- b) An Order of Possession pursuant to sections 47 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) 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 (the Act) for orders as follows:

- e) An extension of time to file this application pursuant to section 66 as they did not know their rights;
- f) A monetary order for one month's free rent for the landlord really wanted the property for their own use; and
- g) Compensation for carpet cleaning and repair.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated October 22, 2014 and of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Preliminary: The female tenant had a different surname on the landlord's application; however, she was married recently so the names on the Decision and Order are amended to state her married name as on the tenant's application..

Issue(s) to be Decided:

The tenants vacated on November 30, 2014 so the landlord no longer requires an Order of Possession. The remaining issues are with the compensation claimed by each party. Has the landlord proved on a balance of probabilities that the tenants damaged the property, that it was beyond reasonable wear and tear and the cost to cure the

damage? Are they entitled to retain the security deposit to offset the amount owing and to recover the filing fee for this application?

Have the tenants proved on a balance of probabilities that they are entitled to the refund of their security deposit and compensation of one month's rent and for carpet cleaning and repair?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in November 1, 2007, that rent is currently \$1354 a month and a security deposit and pet damage deposit each in the amount of \$625 were paid on October 18, 2007. The total of the deposits in trust including interest is \$1272.66 as of today's date.

The tenants vacated on November 30, 2014. The landlord did an inspection and took photographs dated October 22, 2014 to illustrate damage done by pet scratches on a door frame and carpet damage. The tenants state that this damage was repaired and include a carpet cleaning invoice dated November 29, 2014 which stated "The carpet is already 8 years old. For this it looks pretty good. All usual stains came out". The tenants also included in evidence an invoice from a repair person dated November 29, 2014 which stated he replaced the door casing, sections of baseboard, spackled the wall and made all "paint ready". The landlord provided no subsequent photographs to show the state of the unit when the tenant vacated but they said that there was still an overpowering pet smell from the carpets and they need to replace them.

The landlord claims as follows:

1. \$1690: to replace carpet including underlay and disposal of old carpet.
2. \$250: to replace the missing casing, fix the wall and paint.

The tenant claims as follows:

3. \$115 : to clean the carpet
4. \$200 for repairs to the casing and wall
5. \$1,272.66 for return of their deposits
6. \$1354 as a refund of November's rent.

The tenant queried the intent of the landlord in issuing the Notice to End Tenancy for cause of extraordinary damage as there was no correspondence concerning damage or time to repair it but the landlord abruptly came in, took photographs and issued the Notice to End Tenancy. Meanwhile, the tenant showed in evidence an email from a realtor dated October 15, 2014 which said the owners planned to sell the unit as soon

as possible. He claims the owner should have served a Notice to End Tenancy under section 49 and he should be entitled to one month's free rent as provided in section 51 of the Act. The tenant provided photographs of the unit dated November 29, 2014 just prior to them vacating.

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

Analysis

Monetary Order:

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that there was some damage to the carpet caused by these pets. Although the tenant submitted it was foreseeable as there was a deposit for pet damage, I find that tenants are still responsible to compensate the landlord for such damage even if it is foreseeable. The cleaning invoice notes that "usual stains" were removed; it did not say all stains. The tenants honestly also admitted that their pets may have made some stains or smells but it was reasonable wear and tear after living there 7 years and the prior tenant also had pets. I find the Residential Policy Guideline assigns a useful life to various items in rented premises which is designed to calculate and allow for reasonable wear and tear. Carpets are assigned a useful life of 10 years. As the carpet is 8 years old, I find the landlord entitled to recover 20% of the cost of replacement or \$338 (\$1690 x 20%).

I find the landlord's evidence regarding the door casing not as credible as the tenant's as they had provided no up to date photographs and the invoice and photographs of the tenant support their contention that these repairs were completed before they vacated. I find the landlord not entitled to recover costs claimed for the door casing and wall repairs.

In respect to the tenant's claim for one month's free rent, I find they were not served a Notice to End Tenancy under section 49 for landlord's use of the property which would trigger a free month's rent. As pointed out in the hearing, if they had contended the section 47 Notice successfully they could have stayed and perhaps been a tenant of the new purchaser. I find insufficient evidence to support their allegation of bad faith on the part of the landlord. Therefore I find no legal basis for awarding one month's free rent and deny this claim. In respect to their claim for carpet cleaning and repairs, I dismiss this portion of their claim as it was their responsibility as tenants to repair any damage they caused.

I find the tenants entitled to recover the balance of their security and pet damage deposits.

Conclusion:

I find the landlord entitled to retain a portion of the security and pet damage deposits as calculated below as compensation for damage caused by the pets. I find them entitled to recover filing fees for their application.

I find the tenant entitled to a monetary order for the balance of their deposits as calculated below and to recover their filing fees for their application.

Calculation of Monetary Award:

Pet damage and Security deposits including interest	1,272.66
Filing fee to tenant	50.00
Allowance for carpet replacement to landlord	-338.00
Filing fee to landlord	-50.00
Total Monetary Order to Tenant	934.66

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: December 17, 2014

Residential Tenancy Branch

