



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

a A matter regarding ROCKY INTERNATIONAL INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord 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 landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on March 01, 2006 and ended on February 28, 2014. Rent started at \$820.00 per month due on the 1st of each month.

The landlord testified that the tenant was given a Rent Increase Notice on July 30, 2012 which was effective on November 01, 2012 and increased the rent by \$30.00 a month to \$850.00. The landlord testified that the tenant did not pay this rent increase and the landlord did not follow through as there was a change of building manager who did not know the rent increase had been made. When it was realized that the tenant had not paid the rent increase another Rent Increase Notice was given to the tenant on August 30, 2013 effective on December 01, 2013 with the same increase of \$30.00. The landlord testified that this second Notice was really just given as a reminder to the tenant that his rent was \$850.00. The landlord seeks to recover the outstanding rent for 15 months only of \$450.00. The landlord has provided copies of the two rent Increase notices in documentary evidence.

The landlord testified that the tenant failed to leave the rental unit in a clean condition at the end of the tenancy. The carpets were left stained, the kitchen floor was dirty, and the washroom needed cleaning along with the stove and fridge. The landlord seeks to recover \$150.00 for carpet cleaning and \$50.00 for general cleaning. The landlord has provided two photographs showing the carpets and the kitchen floor in documentary evidence.

The tenant disputes the landlord's claim to recover the rent increase for 15 months. The tenant testified that when he was given the first Rent Increase Notice the tenant had a mouse problem and issues with the plumbing. The tenant testified that he spoke to the building manager, who was in place at the time, about these problems and asked that he should not have to pay the rent increase. The building manager said he would talk to the owner and get back to the tenant; however, neither the building manager or owner got back to the tenant so the tenant assumed the owner had agreed the tenant did not have to pay the increase.

The landlord testified that he was never informed that the tenant had a mouse or plumbing problem. If the tenant had issues such as these the tenant should have put it in writing and explained why he should not pay the rent increase.

The tenant testified that everything in the unit was left clean. The tenant testified that he had lived in the unit for six or eight years and there would be some normal wear and tear on the carpets which were new at the start of the tenancy. The tenant testified that he had an agreement with the original landlord that \$75.00 would be deducted from the security deposit at the end of the tenancy for carpet cleaning so the tenant did not have the carpets cleaned when he moved out. The tenant testified that he had cleaned all other areas of the unit including the washroom, stove and fridge.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid rent increases; in accordance with s. 42 and 43 of the *Act* the landlord is entitled to impose a rent increase calculated in accordance with the regulations as long as it is on an approved form and three months' notice is provided. I have reviewed the Rent Increase Notice issued in 2012 and find this Notice meets all the given criteria set out in S. 42 and 43 of the *Act* and is an amount calculated in accordance with the allowable rent increase for 2012. If the tenant had issues with mice and/or plumbing in his unit the tenant should have notified the landlord in writing and requested that these issues were resolved. If the landlord did not then resolve the issues the tenant could have filed an application for a rent reduction based on repairs not being made. The tenant is not entitled to withhold any portion of rent unless the landlord has agreed to this. Simply assuming the landlord has agreed is insufficient. Consequently, I am satisfied that the landlord has established a claim to recover the shortfall in rent of **\$450.00**.

With regards to the landlord's claim for cleaning; 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.

The landlord has provided two photographs one showing staining on the carpet and one showing the kitchen floor. The landlord testified that the washroom, fridge and stove all required cleaning as well, yet as provided insufficient evidence to show these areas. The landlord has not provided a copy of either of the inspection reports detailing areas of the unit not cleaned. The landlord has claimed \$150.00 for carpet cleaning and \$50.00 for cleaning; however, has provided insufficient evidence to show the actual costs incurred for this work. The tenant testified that he had an agreement with the original landlord that \$75.00 would be deducted from the security deposit for carpet cleaning. The tenant applied for Dispute Resolution and at a hearing held in June, 2014 the tenant was awarded the security deposit therefore no deductions were made from it for carpet cleaning. As the landlord has failed to meet the burden of proof as indicated in the above test for damage or loss claims I must limit the landlord's claim to **\$75.00** for carpet cleaning as the landlord's evidence clearly shows that the carpets were not left in a reasonable clean condition at the end of the tenancy. No further award will be made for cleaning as the landlord failed to meet the burden of proof that general cleaning was required or the actual cost for any general cleaning carried out.

As the landlord's claim has some merit I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the Act.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$575.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order is enforceable 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: December 10, 2014

Residential Tenancy Branch

