



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding C.A. REALTY LTD. DBA CREIGHTON & ASSOCIATES REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND MNR 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 Sections 46 and 67;
- 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.

SERVICE:

Both parties attended, but the one tenant who attended has a dispute with the other so does not represent the other tenant. He agreed he received a copy of the Application for Dispute Resolution by email from the landlord as he is travelling and did not get a copy of the registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and that the tenant did damages to the property, that they were beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

Preliminary Issue: The second tenant's name on the Application is incorrectly spelled so the attending tenant requested to have it corrected. It is amended as requested; I note the correct name and spelling is on the lease enclosed.

Background and Evidence:

The landlord and one tenant, A.J., attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in 2010 and the current fixed term lease expired on October 31, 2014. Rent is \$1600 a month and a security deposit of \$800 was paid on September 1, 2010. Apparently there were negotiations for a further lease but the tenants had a

violent disagreement and the tenant, A.V. vacated. The landlord by email suggested that he might be able to re-rent the suite for December 1, 2014 if the tenant A.J. vacated by the end of November 2014 as he knew meeting the rent payments would be very difficult. November rent was paid but A.V. did not vacate and return keys until December 2, 2014 so the landlord could not re-rent until December 15, 2014. The landlord claims half of one month's rent or \$800 for December 1-15. The tenant contends that the landlord gave him notice by telling him to vacate by email; the landlord denies this and states he was making a suggestion for the tenant's benefit but the tenant did not take the suggestion but stayed until early December which prevented him renting for the first part of December.

The landlord also requests \$250 as compensation for carpet damage. It is stained so badly it has to be replaced. He said the carpet is about 7 years old and would cost \$1200 to \$1400 to replace and the \$250 represents the devaluation of it and partial cost to replace it. He put in evidence the condition inspection report at move-in. The tenant A.J. said the carpet was badly stained when he moved in and the property manager then said it would have to be replaced. The tenant A.V. admits to responsibility for carpet damage but states A.J. should be responsible for rent as he was the one who stayed into December 2014. Both tenants signed the lease.

In evidence are several leases, photos of the damaged carpet, emails. On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

The onus of proof is on the landlord to prove that the tenant owed rent and did damage to the property, that it was beyond reasonable wear and tear and the amount it cost to cure this damage. I find the landlord's evidence credible that the tenant remained in the unit until December 2, 2014 and had paid no rent for December; the tenant agreed this was correct.

Although the tenant stated the landlord gave him notice to end the tenancy and he vacated in response to the notice, he only read an email into the hearing which he believed was notice to end the tenancy and he had vacated in response to it. I find section 52 of the Act sets out the criteria for a notice to end tenancy to be effective. I find the email the tenant received was not an effective notice as it does not meet the criteria and was more probably a suggested solution to rent payments and the two tenants having a parting of the ways. I find rent is due and payable on the first of the month according to the lease and the tenant did not give a one month notice to end the

tenancy as required by section 45 of the Act. However, I find the landlord mitigated his damages by re-renting as soon as possible; he re-rented on December 2014. I find the tenant responsible for half of one month's rent or \$800.

In respect to the carpet damage, I find the landlord's evidence more credible than the tenants. Although the tenant alleged the carpet was badly stained when they moved in, I find the condition inspection report at move-in does not support this allegation as no carpet damage or staining is noted. I find the carpet was about 7 years old and would cost approximately \$1200 to replace. The Residential Policy Guideline assigns a useful life of 10 years for carpets in rented premises so this carpet had about 3 years of useful life remaining. I find the landlord entitled to recover the \$250 he claimed as according to the Guidelines there was \$360 useful life value left in the carpet.

Although the tenant discussed refund cheques being issued separately to the tenants, I find there is no refund but a liability as calculated below. Legally, parties to a lease are jointly and separately liable for the costs so a Monetary Order will be issued in both names. The landlord may choose to collect from either party or both parties the total amount.

Conclusion:

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

Calculation of Monetary Award:

Half of one month's rent	800.00
Carpet devaluation cost	250.00
Filing fee	50.00
Less security deposit (no interest 2010-15)	-800.00
Total Monetary Order to landlord	300.00

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 10, 2015

Residential Tenancy Branch