



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on September 31, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were 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 tenants, 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 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 September 01, 2011 for a fixed term of a year. The tenancy was renewed on September 01, 2013 for another year's term ending on August 31, 2014. The tenancy ended on September 03, 2014. Rent for this unit was \$5,500.00 per month due on the 1st of each month. The tenant paid a security deposit of \$2,750.00 on September 06, 2011. Both parties attended the move in and the move out condition inspection of the unit. The tenants provided a forwarding address by email on September 19, 2014. The landlord filed this application on September 24, 2014.

The landlord testified that the carpet was left severely stained throughout the upstairs of the unit namely the two large bedrooms and upper hallway. The landlord attempted to have the carpet cleaned but was unsuccessful as the staining could not be removed. The landlord has provided a copy of the condition inspection reports detailing the staining. The landlord seeks to recover the amount of \$157.50 for carpet cleaning and has provided an invoice in documentary evidence which details the staining on the carpets.

The landlord testified that as this is a high end unit the carpet was of a high end wool variety. The landlord sought two quotes to replace the carpet and underlay and went for the cheaper quote. The landlord testified that the carpet was six years old but was provided in a clean condition at the start of the tenancy. The landlord has provided copies of the quotes in documentary evidence and has deducted 40 percent for the depreciation of the carpet over its life. The cheaper quote was for \$7,297.50 including installation. The landlord therefore seeks to recover \$4,378.50 to replace the carpet.

The landlord testified that the tenants agreed the landlord could have the unit and carpets professional cleaned. The tenants asked the landlord to coordinate the cleaning and to deduct this from the security deposit. The landlord hired a cleaning company to complete this work. The landlord seeks to recover \$882.00 for the cleaning and has provided the cleaners invoice in documentary evidence. The landlord referred to this invoice where the cleaners have indicated that the unit was so dirty everywhere and four cleaners attended for seven hours each.

The landlord testified that the garage was not left clean at the end of the tenancy. There were some items left by the tenants and the concrete flooring had some staining. The items were removed and the floor had to be scrubbed to remove the staining. The landlord seeks to recover \$52.50 for this work and have provided an invoice for this work in documentary evidence.

The landlord referred to an email from the tenant in which the tenant disputed the landlord's claim and stated he does not agree to pay any more than the security deposit. The landlord testified that the tenants were not supposed to have a pet in the unit yet the carpet cleaner's invoice refers to pet urine stains on the carpets.

Analysis

The tenants did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlord's 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.

With this test in mind I find from the evidence before me that the carpets were left in an unclean condition at the end of the tenancy with various stains. I therefore uphold the landlord's claim to attempt to mitigate the loss by trying to have the carpets professionally cleaned prior to replacing them. The landlord is therefore entitled to recover this cost of **\$157.50**.

As the staining could not be removed from the carpets I find the landlord is entitled to replace the carpets due to the stains. I refer the parties to s. 32(2) and (3) of the *Act* which states:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

There is sufficient evidence to support the landlord's claims concerning the staining on the carpets and the tenants actions or neglect during the tenancy which caused these stains. I also find the landlords have mitigated the loss by selecting the cheaper of two quotes for replacement carpets. The landlord deducted 40 percent for depreciation; however; the landlord stated that the carpets were six years old and therefore I have deducted a further 20 percent for the deprecation of six years. The total amount the landlord is entitled to, taking into account deprecation of six years, is therefore **\$2,919.00**.

With regard to the landlord's claim for cleaning; I am satisfied from the evidence before me that the landlord has met the burden of proof regarding cleaning the unit. The landlord has shown that the tenants left the rental unit unclean at the end of the tenancy and the landlord has shown the actual cost incurred to clean the unit. I am therefore satisfied with the landlord's claim to recover **\$882.00**.

With regard to the landlord's claim to clean the garage; I am satisfied that the tenants left some items in the garage which the landlord had to dispose of. I am also satisfied that the garage floor was left stained. Consequently, I find the landlord has met the burden of proof regarding the cleaning of the garage and I therefore uphold the landlord's claim to recover **\$52.50**.

I Order the landlord to keep the security deposit of **\$2,750.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's monetary award. I further find as the landlord's claim as merit that the landlord is entitled to recover the filing fee of \$50.00. The landlord will receive a Monetary Order for the following amount:

Carpet cleaning	\$157.50
Replacement carpets	\$2,919.00
Cleaning	\$882.00
Garage clean up	\$52.50

Filing fee	\$50.00
Subtotal	\$4,061.00
Less security deposit	\$2,750.00
Total amount due to the landlord	\$1,311.00

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,311.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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 04, 2015

Residential Tenancy Branch

