



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes FF, MND, MNDC, MNSD, MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for unpaid rent, for loss of rent, for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, for an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing, who was represented by the owner of the property, C.C. and the property manager, M.J. M.J. testified on behalf of the Landlord, and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

M.J. testified that she served the Tenants with the Notice of Hearing and the Landlord's Application for Dispute Resolution on January 13, 2015 by registered mail. Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of January 18, 2015.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began December 24, 2013 and ended December 31, 2014. The monthly rent was \$2,100.00, payable on the first of the month and the Tenants paid a security deposit of \$1,050.00 on December 23, 2013.

Introduced in evidence was a copy of the move in condition inspection report. M.J. testified that the Tenants gave notice on December 4, 2014.

Introduced in evidence were ads posted by the Landlord for the rental unit and which confirmed the Landlord posted on several popular internet rental sites. The rental unit was advertised for \$2,400.00 per month. When I asked M.J. why the rent had been raised over and above that which was charged to the Tenants, M.J. responded that the additional \$300.00 per month was to cover gardening services; notably the ads did indicate the Landlord would be responsible for landscaping and lawn maintenance.

Also introduced in evidence were copies of the move in and move out Condition Inspection Report which indicated the Tenants were involved in both inspections.

The Tenants vacated the property however, the Landlord claimed they incurred costs to clean the rental unit due to the condition it was left in by the Tenants.

The Landlord submitted a receipt for carpet cleaning in the amount of \$644.32.

M.J. testified that the Tenants' mother attempted to clean the carpets to remove stains caused by the Tenant, but that the manner in which the Tenants' mother cleaned the carpet resulted in discolouration. Accordingly, the Landlord submitted that the carpet should be replaced and to this end provided an estimate for the cost to replace the carpet in the amount of \$888.72.

Clause 43 of the tenancy agreement, dated December 23, 2013, clearly indicates the Tenants agreed that smoking was prohibited. The Landlord testified that despite this agreement, the Tenants, or persons permitted by the Tenants, smoked in the rental unit which caused a significant smell of smoke. The Landlord submitted that the rental unit required further "ozonation" which she estimated would cost \$600.00.

The Landlord also sought the sum of \$45.00 for a water bill she says was received after the tenancy ended. The Landlord confirmed this bill was not in evidence.

The Landlord claims as follows:

Loss of rent for January 2015	\$2,100.00
Carpet cleaning	\$644.36
Further ozonation of entire rental unit	\$600.00
Outstanding water bill	\$45.00
Estimate to replace carpet	\$888.72
Filing fee	\$50.00
Total claimed	\$4,328.08

When I brought it to the Landlord's attention that the figures did not equal \$4,236.08 as claimed on the monetary Order work sheet, the Landlord confirmed that the net figure for the carpet replacement, rather than the amount including tax had been used.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. that the other party violated the *Act*, regulations, or tenancy agreement;
2. that the violation caused the party making the application to incur damages or loss as a result of the violation;
3. the value of the loss; and,
4. that the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords took reasonable steps to minimize the damage or losses that were incurred.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

The Tenants gave written notice on December 4, 2014; pursuant to section 45 of the Act, the effective date of the Tenants' notice is January 31, 2015. As such, the Landlord is entitled to recover the rent for January 2015 in the amount of **\$2,100.00**.

I accept the undisputed evidence of the Landlord that although the Tenants' mother attempted to clean the carpet, the Landlord incurred the cost of professional carpet cleaning in the amount of **\$644.36**. The Landlord is entitled to recover this amount.

The photos confirm that even after the professional cleaning the stains were not able to be removed. The Landlord submitted an estimate in the amount of \$888.72 for replacement of the carpet. I find that the Landlord, in attempting to clean the carpets, took reasonable steps to mitigate their loss.

Residential Tenancy Policy Guideline 40 provides that,

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement."

While no evidence was provided as to the age of the carpets, the photos submitted in evidence indicate they were relatively new as they appeared in excellent condition without any visible wear; presumably, on a high traffic area such as stairs, wear would be visible if they were older. Accordingly, I grant the Landlord's request for the full replacement cost of the carpets in the amount of **\$888.72**.

The tenancy agreement clearly indicates the Tenants were not to smoke in the rental unit. I accept the undisputed evidence of the Landlord that the Tenants, or persons permitted in the rental unit by the Tenants, smoked in the rental unit creating an unpleasant smell. In doing so, the Tenants breached the tenancy agreement and the Landlord will incur the cost to repair the rental unit. Consequently, I grant the Landlord's request for **\$600.00** for ozonation of the entire rental unit.

As the Landlord failed to introduce the \$45.00 water bill, I dismiss this claim.

The Landlord, having been substantially successful is entitled to recover the filing fee.

Therefore, I allow the Landlords **\$4,283.08** for the following:

Loss of rent for January 2015	\$2,100.00
Carpet cleaning	\$644.36
ozonation of rental unit	\$600.00
Cost to replace carpet	\$888.72
Filing fee	\$50.00
Total allowed	\$4,283.08

I order that the Landlords retain the deposit and interest of **\$1,050.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$3,233.08**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord is entitled to \$4,283.08; may retain the security deposit in the amount of \$1,050.00 and is awarded a Monetary Order in the amount of **\$3,233.08** for the balance due.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 16, 2015

Residential Tenancy Branch

