



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WAL-DEN INVESTMENTS (BC) LTD
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for unpaid rent, for damages to the unit and for an order to retain the security deposit or pet damage deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The landlord confirmed that they did not file any evidence with the Residential Tenancy Branch or provide any evidence to the tenant.

The landlord confirmed receipt of the tenant's evidence package and stated that it appears not to be relevant.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2010. Rent in the amount of \$875.00 was payable on the first of each month. The tenants paid a security deposit of \$437.50 and a pet damage deposit of \$427.50 (the "Deposits"). The tenancy ended on November 30, 2014.

At the outset of the hearing the tenant agreed that they did not pay \$342.50 rent for November 2014. The tenant stated that they made attempts to pay rent which the landlord refused to accept.

The landlord's agent testified that the tenants caused damage to the rental unit by smoking. The agent stated that it took them 24 hours to paint the rental unit and they seek compensation at the rate of \$30.00 per hour. The agent stated that the rental unit was freshly painted at the start of the tenancy. The landlord seeks to recover the cost of painting in the amount of \$720.00.

The landlord's agent testified that there was a hole in the drywall which had to be repaired. The landlord seeks to recover the cost of repairing the drywall in the amount of \$75.00.

The landlord's agent testified that the tenants caused damage to the carpets as there was pipe burns and cat urine throughout. The landlord seeks to recover the cost of replacing the carpets in the amount of \$2,100.00.

The landlord's agent testified that the entire rental unit needed to be cleaned. The agent stated that they spent 10 hours cleaning and they seek compensation at the rate of \$30.00 per hour. The landlord seeks to recover their time for cleaning in the amount of \$300.00.

The landlord's agent testified that the tenants failed to clean the stove and the refrigerator at the end of the tenancy and they seek compensation of \$50.00 for each appliance they had to clean. The landlord seeks to recover the amount of \$100.00.

The landlord's agent testified that the tenants' toaster started a fire and burned the kitchen countertop. The landlord seeks to recover the cost to replace the countertop in the amount of \$195.50.

The landlord's agent testified that the tenants' rental unit had a flea infestation due to the tenants' cat and they had to do a flea treatment in the rental unit. The landlord seeks to recover the cost of the flea treatment in the amount of \$75.00

The tenant testified that they deny causing any damage to the rental unit by smoking. The tenant stated that they do not smoke and they have a medical condition which prohibits smoking. The tenant stated that the rental unit was not painted at the start of the tenancy, although the landlord promised it would be.

The tenant testified that the hole the landlord's agent referred to was in the ceiling of the bathroom which was caused by the upper rental unit's bathroom leaking water which was never repaired by the landlord during their tenancy.

The tenant testified that the carpets were burnt and dirty when they moved into the rental unit. The tenant stated that during the first month of their tenancy the landlord had two different agents. The tenant stated that when the current agent took over the responsibilities they were aware of the poor condition of the carpets that were provided to them and had the high traffic areas cleaned.

The tenant acknowledged that their toaster caught on fire; however, the tenant denied it caused any damage to the countertop.

The tenant testified that the entire building had an ongoing flea and rodent problem since the start of their tenancy. The tenant denied that the flea infestation was caused by their cat.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

...

The tenant acknowledged that rent was owed for November 2014, in the amount of \$437.50. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of \$437.50.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, both parties provided a different version of events as to the state of the rental unit at the end of the tenancy. The evidence of the landlord's agent was that the tenants caused damage to the carpets, drywall and kitchen countertop. The tenant denies that they caused any damage to these items. The evidence of the landlord's agent was the tenant did not clean the rental unit or the appliances at the end of the tenancy, and that the tenants' cat caused flea infestation. The tenant denies leaving the rental unit unclean. The tenant denies their cat caused a flea infestation.

I find both versions of events are equally probable. Since the burden of proof is the landlord to prove their claim, I find without further evidence for the landlord, such as photographs the landlord has failed to prove their version. Therefore, I dismiss the landlord's claim for damages.

I find that the landlord has established a total monetary claim of **\$492.50** comprised of unpaid rent and the \$50.00 fee paid for this application.

I order that the landlord retain the above amount from the Deposits in full satisfaction of the claim. I find the tenants are entitled to a monetary order for the balance due of their Deposits in the amount of **\$382.50**. Should the landlord not comply with my order, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order and may keep a portion of the Deposits in full satisfaction of the claim. The tenants are granted a formal order for the balance due of their deposits.

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: July 16, 2015

Residential Tenancy Branch