



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Now Canada Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit. The hearing was originally set for June 10, 2015 but at the time appointed for the hearing, the landlord telephoned into the conference call hearing to advise that they had learned that the tenant had been hospitalized and they requested an adjournment. The hearing was reconvened on this date.

At the second hearing, the tenant requested a further adjournment. She stated that the organization with which her previous advocate worked had closed down several months ago and although she had tried to find another advocate in the week prior to this hearing, she had been unable to do so. Her health care worker confirmed that they had attempted to find another advocate. When asked why the tenant required an advocate, the health care worker declined to comment and the tenant stated that she was ill and in pain. The landlord objected to a further adjournment.

I determined that a further adjournment was not appropriate. The landlord had already requested an adjournment for the tenant's benefit and the tenant chose not to make attempts to secure another advocate until immediately prior to the second hearing rather than making use of the several months in which she had opportunity to look. Further, the tenant did not demonstrate that she required an advocate in order to competently answer the claim against her. The request for an adjournment was denied and the hearing proceeded.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in March 2011 and that the tenant paid a \$187.50 security deposit. They further agreed that when the tenant moved into the unit, it was brand new and she was the first occupant to reside in the unit. They further agreed that the tenancy ended on September 30, 2014 pursuant to an order of possession which had been granted by this office. The order of possession required the tenant to vacate the unit no later than 1:00 p.m. on September 30, 2014.

The landlord seeks to recover the cost of replacing the bedroom carpet at the end of the tenancy. The landlord provided photographs showing that there were a number of burn marks from cigarettes grouped together over what appears to be approximately 1 square foot and another burn mark on another area of the carpet. The landlord testified that the fact that the carpet was burned together with the fact that the tenant smoked in the rental unit causing the carpet to absorb significant odour required the landlord to replace the carpet. The condition inspection report contains the tenant's signature by a provision which states that she agrees to a deduction from her security deposit and that the carpet needs to be replaced. The landlord provided evidence that it cost \$280.00 to purchase the carpet and an additional \$305.50 to install it for a total claim of \$584.50.

The tenant acknowledged that she signed the condition inspection report and agreed that the carpet needed to be replaced, but testified that it was her understanding that the landlord would only replace the very small area of carpet which was actually burned and would retain the rest of the carpet. She argued that because she was permitted to smoke in the unit, she should not be held responsible for the cost of repairing the unit from smoke damage.

The landlord seeks to recover \$341.25 as the cost of repainting the unit at the end of the tenancy. They testified that because the tenant smoked in the unit, it needed to be repainted. They further testified that it is their practice to repaint units every 7 years.

The tenant argued again that because she was permitted to smoke in the unit, she should not be held responsible for the damages resulting therefrom.

The landlord seeks to recover the cost of cleaning the rental unit and claims 11 hours of cleaning at a rate of \$15.00 per hour for a total of \$165.00. The tenant argued that she was in the process of cleaning when the landlord performed the condition inspection at 1:00 on the last day of the tenancy. She said she had already cleaned behind the refrigerator and swept the floors.

The landlord also seeks to recover the \$50.00 filing fee paid to bring this application.

Analysis

The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction; and
3. Proof of the value of that loss.

Section 37(2)(a) of the Act requires tenants to leave the rental unit in reasonably clean condition except for reasonable wear and tear. I find that the damage to the carpet goes beyond what may be considered reasonable wear and tear and I find that the tenants’ expectation that the landlord would replace just a small part of the carpet is unreasonable. I find that the landlord was required to replace the carpet as a result of the damage caused by the tenant. Residential Tenancy Policy Guideline #40 lists the useful life of building elements and identifies the useful life of carpet as 10 years. I find that the tenant deprived the landlord of 6 ½ years of the useful life of the carpet and I find that the tenant must therefore bear 65% of the cost of replacing the carpet. I award the landlord \$379.93.

Although the tenant was permitted to smoke in the unit, I find that she was responsible to clean the rental unit well enough that the unit did not smell of smoke at the end of the tenancy. I find that she failed to remove the smoke smell and therefore the landlord had to do the cleaning and painting necessary to remove the smell. Residential Tenancy Policy Guideline #40 identifies the useful life of interior paint as 4 years. Although the landlord is in the practice of painting every 7 years, I find the landlord is not entitled to expect that paint will last that long. I find that the tenant deprived the landlord of ½ of a year of the useful life of the paint and is therefore responsible for 12.5% of the cost of painting. I award the landlord \$42.66.

Although the tenant claimed that she was not given opportunity to clean the unit, the order of possession required her to vacate the unit at 1:00 p.m. The tenant did not have the right to expect that her tenancy would continue until midnight to permit her additional time to clean. Although the tenant performed a few minor tasks, I find that the rental unit was substantially unclean and therefore the landlord incurred expense performing that cleaning. I find the landlord’s claim to be reasonable and I award them \$165.00.

As the landlord has been successful in this claim, I find they should recover the filing fee paid to bring their application and I award them \$50.00 for a total entitlement of

\$637.59. I order the landlord to retain the \$187.50 security deposit in partial satisfaction of the claim and I grant them a monetary order under section 67 for the balance of \$450.09. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord will retain the security deposit and is granted a monetary order for \$450.09.

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: August 17, 2015

Residential Tenancy Branch

