



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARDENT PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit and pet damage deposit (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1314 in order to enable the tenant to connect with this teleconference hearing scheduled for 1300. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent confirmed that she had authority to act on behalf of the landlord.

The agent testified that the landlord served the tenant with the dispute resolution package on 17 April 2015 by registered mail to the forwarding address provided by the tenant. The agent provided me with a Canada Post tracking number for the mailing. The agent testified that the mailing was returned as the tenant failed to claim the mailing. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage and loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 August 2014 and ended 31 March 2015. Monthly rent of \$750.00 was due on the first of the month. The landlord continues to hold the tenant's pet damage deposit in the amount of \$375.00 and the security deposit in the amount of \$375.00, which were collected at the beginning of the tenancy.

I was provided with a copy of the written tenancy agreement. The agreement was entered into on 29 July 2014. The agreement contains a clause pertaining to late fees at subclause 4(a):

...Late payment and returned cheques are subject to an administrative fee of \$42.50 each and are due and payable to [the landlord] immediately.

I was provided with condition move in and move out inspection reports. There is nothing remarkable about the condition move in inspection report.

The condition move out inspection report notes:

- the living room floor is sticky;
- the baseboards were dirty; and
- pet damage that is estimated as costing \$100.00 (the agent testified that this refers to the urine odor).

The agent testified that the tenant's mother attended the condition move out inspection and told her son that there was no way the tenant could deny that he let his pet urinate on the flooring.

The tenant agreed to deductions in the amount of \$287.50 from his security deposit and \$100.00 from his pet damage deposit.

The agent testified that the landlord attempted to clean the urine from the floor. The landlord testified that a cleaner attempted to clean the floor four or five times with a special cleaner. The odor remained after these attempts. I was provided with an invoice from the cleaner dated 31 March 2015 in the amount of \$125.00.

The landlord provided me with an estimate for replacement of the flooring. The quote is dated 10 April 2015 and is in the amount of \$2715.69. The agent testified that this was the only quote the landlord solicited. The agent testified that the landlord uses this company for almost all of their flooring needs. The agent testified that the landlord has solicited other quotes in the past, but found that this company provides the best value.

The agent testified that the floor was no older than five years old at the end of the tenancy.

The agent testified that it was necessary to replace the entire floor as it was not possible to seek a match for the existing laminate flooring.

The landlord claims for \$3,053.19:

Item	Amount
Flooring	\$2,715.69
Cleaning	125.00
Late/NSF Fees	212.50
Total Monetary Order Sought	\$3,053.19

Analysis

Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

Residential Tenancy Policy Guideline, 1. Landlord & Tenant – Responsibility for Residential Premises” (Guideline 1) sets out the tenant’s responsibilities:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. ...

[emphasis added; footnote removed]

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant’s duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

Allowing a pet to urinate on the floor does not comply with the standards required of a tenant pursuant to subsection 32(2) of the Act. Further, any damage caused by such urination is damage for which the tenant is responsible pursuant to subsection 32(3) of the Act. I find that the tenant has breached both subsection 32(2) and (3) of the Act and as a result of this breach the landlord suffered damage in particular the losses associated with remediating the damaged floor.

The landlord provided a receipt for five hours of cleaning at an hourly rate of \$25.00. I find that these cleaning costs are reasonable. I find that the landlord has proven its entitlement to the cleaning costs.

I find that by attempting to clean the flooring first, the landlord mitigated its damages by attempting a less costly solution to replacement of the floor. I find accept the agents affirmed and uncontested testimony that the entire flooring had to be replaced as a match to the existing laminate was not possible. Further, I accept that the landlord's

business judgment that the quote provided represents the best value quote for the floor repair. The landlord has established that the floor replacement costs \$2,715.69.

Residential Tenancy Policy Guideline “40. Useful Life of Building Elements” provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of tile and carpet is ten years. The guideline sets out that the useful life expectancy of hardwood flooring is twenty years. The policy is silent on laminate flooring, but I find that this floor covering more analogous to hardwood flooring than carpet or tile. I make this determination based on the physical nature of the materials used and the installation process. The agent testified that the flooring was approximately five years old at the end of the tenancy. Accordingly, the flooring had depreciated by 25%. I find that the landlord is entitled to recover for 75% of its costs associated with replacing the floor: \$2,036.77.

Subsection 7(1) of the *Residential Tenancy Regulations* (the “Regulations”) provides that a landlord may charge an administration fee of \$25.00 for late payment of rent. Pursuant to subsection 7(2) a late fee charge may only be applied if the tenancy agreement provides for that fee. The tenancy agreement provides for a late fee in the amount of \$42.50.

Section 5 of the Act prohibits landlords and tenants from contracting out of the Act or Regulations: terms which purport to do this are of no effect. Because the landlord contravened subsection 7 of the Regulations, the clause of the tenancy agreement that relates to the late fee is of no effect. The result is that there is no clause that provides for a late fee as required by subsection 7(2) and no late fee, of any amount, is collectable. Thus, I dismiss the landlord’s monetary claim in respect of the late fee.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The landlord applied to keep the tenant’s deposits. I allow the landlord to retain the deposits in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,461.77 under the following terms:

Item	Amount
Replace Flooring	\$2,036.77
Cleaning	125.00
Offset Deposits Amount	-750.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,461.77

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: September 22, 2015

Residential Tenancy Branch

