



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, O

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits ("deposits") in partial satisfaction of the monetary order requested, pursuant to section 38;
- other unspecified relief.

The landlord and her agent daughter, JV (collectively "landlord"), and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that her agent had authority to speak on her behalf and to provide English language interpretation for her at this hearing. "Witness WG" provided witness testimony on behalf of the tenant at this hearing. This hearing lasted approximately 88 minutes in order to allow both parties to fully present their submissions.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") and the landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application and the landlord was duly served with the tenant's written evidence package. Both parties confirmed that they reviewed the other party's documents and were ready to proceed with this hearing.

The landlord requested an amendment to increase her monetary claim in her Application. The landlord initially sought \$2,970.00 plus the \$50.00 filing fee. The

landlord sought to increase her monetary claim to seek \$6,143.60 plus the \$50.00 filing fee. The tenant confirmed that she was aware of the landlord's claims and that she had received the initial Application plus the additional receipts submitted by the landlord to increase her monetary claim. In accordance with section 64(3)(c) of the *Act*, I allow the landlord to amend her Application to increase the monetary claim sought to \$6,143.60, as I find that the tenant had notice of the landlord's claims prior to this hearing.

At the outset of the hearing, the landlord confirmed that she wished to withdraw her Application for an order of possession for unpaid rent, as the tenant had already vacated the rental unit. Accordingly, this portion of the landlord's Application is withdrawn.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

Is the landlord entitled to retain the tenant's deposits in partial satisfaction of the monetary award requested?

Is the landlord entitled to other unspecified relief?

Background and Evidence

The landlord confirmed that this tenancy began on November 1, 2014 and ended on August 12, 2015. Monthly rent in the amount of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,050.00 and a pet damage deposit of \$100.00 were paid by the tenant and the landlord applied these deposits towards unpaid rent for this tenancy. The landlord confirmed that no move-in or move-out condition inspection reports were completed for this tenancy. Both parties agreed that the tenant did not provide a forwarding address in writing to the landlord. A written tenancy agreement was provided for this hearing.

The landlord seeks a total of \$350.00 in unpaid rent for half of July 2015 and half of August 2015. The landlord stated that after deducting a total of \$600.00 in hydro utilities owed to the tenant for the landlord's share of utilities for both months, against the total rent of \$2,100.00 for both half months, the tenant owed \$1,500.00. The tenant stated that while she did not pay rent for these months, the landlord agreed to use both her deposits, totaling \$1,150.00, to offset the rent, so the unpaid rent is only \$350.00. The landlord agreed with the tenant's contention. The tenant confirmed that the

remaining balance of \$350.00 was not owed because the landlord owes her \$800.00 for using her garage space for 8 months at \$100.00 for each month, as well as \$500.00 for the tenant's stolen items in her rental unit. The landlord denied that the tenant is entitled to \$800.00 for using the garage because the landlord was entitled to use this space for free. The landlord denied that the tenant is entitled to \$500.00 for stolen items, claiming that the landlord did not steal these items.

The landlord seeks the following for damages in the rental unit: \$3,000.00 for replacing the carpet with laminate flooring; \$300.00 for a broken mirror door; \$368.60 for cleaning the carpets before replacing them; \$100.00 for a broken window screen; \$400.00 for general cleaning of the rental unit; \$20.00 for door flashing replacement; and \$400.00 for replacement of a bathroom mirror.

Analysis

Section 26 of the Act requires the tenant to pay rent on the date due in the tenancy agreement, which is the first day of each month in this situation. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Residential Tenancy Regulation* ("*Regulation*") or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Both parties agreed that the landlord agreed to use the tenant's deposits totaling \$1,150.00 to offset the rent owed of \$1,500.00 for July and August 2015. The tenant stated that she is owed \$1,300.00 by the landlord, which offsets the remaining rent of \$350.00 owed to the landlord. I disagree with the tenant's contentions. The tenant did not produce an Order from the Director of the Residential Tenancy Branch indicating that she is entitled to deduct any amounts from rent. The tenant did not pay for emergency repairs at the rental unit, allowing her to deduct any amounts from rent. The tenant provided no documentary or other evidence that \$500.00 in items were stolen by the landlord at the rental unit and the landlord denies the tenant's claims. The tenant did not produce a written agreement signed by both parties indicating that the landlord was required to pay the tenant \$100.00 per month for an 8 month period, for using the garage at the rental unit and the landlord denies the tenant's claims. Accordingly, I award the landlord \$350.00 in outstanding rent for July and August 2015, after accounting for the \$1,150.00 in deductions from the deposits, against the \$1,500.00 total rent.

Section 67 of the *Act* states that when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$300.00 for replacement of the broken mirror door. The landlord provided a receipt for this amount. Both parties provided photographs of this broken mirror door. The landlord claims that the tenant is responsible for this cost because the mirror door was broken during the tenant's tenancy. The tenant agreed that the mirror door was broken, but claimed that the landlord is responsible for this cost because the door was broken while the tenant was away from the rental unit and not due to her negligence. The tenant confirmed that her dog was left in the rental unit while she was away. Witness WH testified that she saw this broken mirror door when she visited the rental unit on August 6, 2015. I am satisfied that the mirror door was broken during the tenant's tenancy and it was due to the tenant's negligence.

I award the landlord \$368.60 for cleaning the carpets in the rental unit. The landlord provided a receipt for this amount. The receipt indicates that extensive carpet cleaning was done on August 13, 2015, due to the fact that there were many stains in the carpets and these stains had to be removed. The landlord provided photographs of the carpets after the tenant vacated. The tenant stated that these stains were present when she moved into the rental unit and provided photographs to support her contention. The tenant indicated that she vacuumed the carpets and witness WH stated that she is aware that the tenant swept, mopped, and vacuumed the floors and carpet. Residential Tenancy Policy Guideline 1 requires the tenant to steam clean or shampoo the carpets, regardless of the length of tenancy, if the tenant had a pet which was not caged in the premises. It also requires steam cleaning and shampooing at the end of the tenancy, regardless of the length of tenancy, if the tenant deliberately or carelessly stained the carpet. Although the tenant did not live at the rental unit for a year, the tenant agreed that at least one of the brown stains in the tenant's photographs was caused by her. The tenant also had a pet dog in the rental unit during this tenancy. Accordingly, I find that as the tenant did not steam clean or shampoo the carpets prior to vacating the rental unit, the landlord is entitled to this cost from the tenant.

I dismiss the landlord's claim for \$3,000.00 for replacing the carpets with laminate flooring, without leave to reapply. Although the landlord provided a receipt for this cost and photographs showing the stained carpet, the tenant provided photographs from November 2, 2014, the day after moving into the rental unit, showing that many stains were already present in the carpets. While I found above that the landlord is entitled to the cleaning cost for the carpets as the tenant admitted to a stain, had a pet dog, and did not steam clean or shampoo the carpets prior to vacating, I do not find that the tenant is responsible for replacement of this already-stained carpet. The landlord only provided photographs after the tenant vacated the rental unit. The landlord did not provide photographs at the time that the tenant moved in, showing that the carpets were in good condition. It is the landlord's burden to prove that the tenant caused numerous stains beyond reasonable repair or cleaning, requiring the carpet to be replaced. I find that the landlord failed part 2 of the test above, as she did not show that the tenant's negligence caused the carpets to require replacement.

I dismiss the landlord's claims without leave to reapply, for \$100.00 for a broken window screen, \$20.00 to replace door flashing and \$400.00 to replace a broken bathroom mirror. The landlord did not provide any receipts for these items and failed part 3 of the above test.

I dismiss the landlord's claim of \$400.00 for general cleaning at the rental unit, without leave to reapply. The tenant and witness WH both provided evidence that the tenant cleaned the rental unit prior to vacating. The tenant provided photographs showing the condition of the rental unit on November 2, 2014, one day after taking possession, and after cleaning the unit and vacating on August 12, 2015. I am satisfied that the tenant reasonably cleaned the rental unit prior to vacating.

The landlord seeks \$55.00 for photocopying documents for this hearing. During the hearing, I advised the landlord that the only hearing-related costs allowable under section 72 of the *Act*, are for filing fees. Therefore, the landlord's claim for \$55.00 for hearing-related photocopies is dismissed without leave to reapply.

As the security and pet damage deposits have already been applied by the landlord towards unpaid rent during this tenancy, the landlord cannot offset these amounts against the monetary award. The tenant is not entitled to double the value of her deposits, as she did not provide a forwarding address in writing to the landlord, in order to trigger the doubling provision in section 38 of the *Act*.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,018.60 against the tenant as follows:

Item	Amount
Unpaid July and August 2015 rent	\$350.00
Replacement of broken mirror door	300.00
Carpet cleaning	368.60
Total Monetary Award	\$1,018.60

The tenants are provided with a monetary order in the amount of \$1,018.60 in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

The landlord's Application for an order of possession for unpaid rent was withdrawn.

The landlord did not provide any evidence with respect to her Application for other unspecified relief. Therefore, this portion of the landlord's Application is dismissed without leave to reapply.

The landlord's Application to retain the tenant's deposits is dismissed without leave to reapply, as the deposits have already been applied to unpaid rent by the landlord.

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: October 14, 2015

Residential Tenancy Branch

