



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E Y Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing them to retain the security deposit. The landlord participated in the conference call hearing but the tenants did not. The landlord testified that she personally served the tenant MS with the application for dispute resolution and notice of hearing on June 4 and that she served those documents on the tenant SS by registered mail on June 1. I found that the tenants had been properly served with notice of the hearing and of the claim against them and the hearing proceeded in their absence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed testimony is as follows. The tenancy began on January 15, 2013 at which time the tenants paid a \$465.00 security deposit and a \$70.00 deposit for keys. The tenants were obligated to pay \$930.00 in rent in advance on the first day of each month. The tenancy ended on May 14, 2015.

The landlord seeks to recover \$2,145.00 in unpaid rent. She testified that the tenants failed to pay \$750.00 of their rent in March and paid no rent whatsoever for the months of April and May. The landlord seeks to recover rent for the month of May only for those dates in which the tenants actually occupied the rental unit.

The landlord seeks to recover \$300.00 as the cost of cleaning the rental unit at the end of the tenancy. She testified that the tenants left the unit in unclean condition and provided photographs showing that the unit was extremely cluttered and dirty. The landlord provided an invoice showing that her staff spent 12 hours cleaning, 2 hours of which she wrote off as reasonable wear and tear.

The landlord seeks to recover \$150.00 as the cost of removing the significant number of items left behind in the rental unit and hauling those items to the landfill. She provided photographs showing the number of items abandoned.

The landlord seeks to recover \$1,587.00 as the cost of replacing carpet at the end of the tenancy. She testified that the carpet was just 28 months old at the end of the tenancy and was so soiled and marked with burns from cigarettes that it could not be cleaned. The landlord seeks the value of the remaining 92 months of the useful life of the carpet.

The landlord seeks to recover \$550.00 as the cost of repairing holes in the drywall and repainting the walls. She entered into evidence showing that the tenants had left significant holes in the drywall one of which appears to be approximately 2' in diameter. She testified that the tenants smoked in the rental unit and as a result, several coats of paint were required to rid the walls of the odour. The landlord testified that this work was performed by her staff.

The landlord seeks to recover \$160.00 as the cost of replacing keys and the locks to the rental unit. She testified that the tenants failed to return keys at the end of the tenancy which required her to change the locks, obtain 2 new keys to the entrance door of the building and a key for the mailbox.

The landlord seeks to recover \$50.00 as the cost of replacing the laundry card which was issued to the tenants and not returned at the end of the tenancy.

The landlord seeks to recover the \$50.00 filing fee paid to bring her 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;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

I note that in the claim before me, mitigation of losses is not applicable.

I accept the landlord's undisputed testimony and her documentary and photographic evidence. I find that the tenants were contractually obligated to pay \$930.00 in rent each month they resided in the rental unit and that they failed to do so. I find that the landlord suffered a loss of income as a result and I therefore award the landlord \$2,145.00 in rental arrears.

Section 37(2) of the Act provides that tenants are obligated to leave the rental unit in reasonably clean and undamaged condition, except for reasonable wear and tear. I find that the tenants failed to comply with the Act by failing to clean the unit and failing to remove their belongings from the unit. I find that the tenants caused damage to the carpet which goes beyond what may be characterized as reasonable wear and tear and that the tenants deprived the landlord of 92 months of the carpet's useful life. I find that the damage to the walls through the holes and exposure to cigarette smoke also goes beyond reasonable wear and tear and that the tenant's breach caused the landlord to suffer losses in repairing and repainting the walls.

Section 37(2) further provides that at the end of the tenancy the tenants are required to return to the landlord all keys and means of access to the unit and residential property and that they failed to do so. I further find that the tenants were obligated under the terms of their laundry agreement to return the laundry card to the landlord and that they failed to do so. I find that the landlord incurred losses as a result of these breaches.

I find that the landlord has met the aforementioned test and I find that she is entitled to recover her losses. As she has been successful in her claim, I find she should also recover the filing fee paid to bring her application. I award the landlord the following:

Rental arrears	\$2,145.00
Cleaning	\$ 300.00
Hauling	\$ 150.00
Carpet replacement	\$1,587.00
Paint and drywall repair	\$ 550.00
Key and lock replacement	\$ 160.00
Laundry card	\$ 50.00
Filing fee	\$ 50.00
Total:	\$4,992.00

I order the landlord to retain the \$465.00 security deposit and the \$70.00 key deposit in partial satisfaction of her claim and I grant her a monetary order under section 67 for the balance of \$4,457.00. 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 and key deposits and is granted a monetary order for \$4,457.00.

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: November 05, 2015

Residential Tenancy Branch

