



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding David Burr Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant stated that the Landlord’s evidence package received by the Residential Tenancy Branch (the “RTB”) on November 6, 2015 has not been received by the Tenant. The Landlord stated that the package was sent last week by regular mail. I note that the evidence package consists of documents dated June, July and September 2015.

Rule 3.14 of the RTB Rules of Procedures provides that evidence that is intended to be relied on at the hearing must be received by the Respondent and the RTB not less than 14 days before the hearing. Considering that the Landlord’s evidence package was not received by the RTB within 14 days of this hearing and considering that all of the documents in that package were available by September 2015 I find that the Landlord’s evidence is late and there is no reasonable basis for its late provision. I therefore exclude this evidence from being relied upon to support the Landlord’s claims.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on June 1, 2014 and ended on May 31, 2015. Monthly rent of \$1,500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit and \$750.00 as a pet deposit. The Parties mutually conducted a move-in and move-out inspection. The Landlord provided copies of the inspection reports to the Tenant immediately. The Landlord received the Tenant's forwarding address on the move-out report dated June 1, 2015. The Tenant indicated disagreement with the condition of the unit as noted on the move-out report

The Landlord states that the Tenant left the carpet in bedroom #1 stained in one approximate 1-2 square foot area and one in the closet. The Landlord states that the carpet was new at the start of the tenancy. The Landlord states that the stains could not be repaired and the carpet has to be replaced. The Landlord provided an estimate of \$879.78 for the replacement of the carpet. The Landlord states that the carpet has not been replaced, the unit has not been re-rented and the owners are considering a sale of the unit. The Landlord states that the Tenant left a bathroom vanity door made of compressed wood damaged somehow by water. The Landlord provided an estimate indicting a replacement cost of \$224.00. The Landlord provided two faxed pages as evidence and I noted that these pages are black. The Landlord claims \$1,500.00.

The Tenant states that there were only 2 small stain spots of approximately 1-1.5 inches in size. The Tenant states that the stains were caused by the bed legs and that the Tenant did try to remove the stains. The Tenant states that the carpet could have been patched and that the estimated amount is inflated. The Landlord states that a more realistic amount would be \$500.00. The Tenant states that the vanity door is right under the sink, is made of particle board without any water proofing cover and that normal use of the sink causes water to splash on the particle board causing it to swell. The Tenant states that normal wear and tear caused the damage. Further the Tenant states that this door could be replaced from anywhere between \$50.00 and \$150.00.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Given the undisputed evidence of the composition of the vanity door and considering its proximity to water, I accept that any swelling may very well be due to wear and tear. I therefore find that the Landlord has failed to establish that the Tenant caused the damage to the door and I dismiss this claim.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs have been incurred or established. Given the evidence that the carpet has not been replaced and given that the unit may be sold, I find that the Landlord has failed to substantiate the amount claimed as a loss. Accepting however that the Tenant did leave a couple of stains I find that the Landlord is entitled to a nominal amount of **\$100.00** to reflect some loss in the esthetic value of the carpet. As the Landlord's application has met with limited success, I decline to award recovery of the filing fee.

Deducting the Landlord's entitlement of \$100.00 from the combined pet and security deposit of **\$1,500.00** plus zero interest leaves **\$1,400.00** to be returned to the Tenant forthwith

Conclusion

The application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$1,400.00**. If necessary, this order may be filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 12, 2015

Residential Tenancy Branch

