



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX REALTY SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, FF

Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants (male and female) did not attend this hearing, which lasted approximately 60 minutes. The owner of this rental property ("owner") and the landlord's agent, ALS ("landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The owner confirmed that the landlord company named in this application was the property management company for this rental unit and that the landlord had authority to speak on the owner's behalf at this hearing. "Witness CB" testified on behalf of the landlord at this hearing, with respect to service of documents.

The landlord testified that she personally served the tenants with the landlord's application for dispute resolution hearing package ("Application") on June 24, 2015. Witness CB testified that he witnessed this personal service. In accordance with section 89 of the *Act*, I find that both tenants were served with the landlord's Application on June 24, 2015.

The landlord testified that she was assaulted by the female tenant while serving her with the Application. The landlord confirmed that the female tenant was issued a "no contact order" against the landlord but was given a pardon in order to attend this hearing. The landlord read aloud the contents of the pardon letter during the hearing. Accordingly, I accept that the female tenant was permitted to attend this hearing.

The landlord confirmed that she did not serve a copy of coloured photographs to the tenants, only black and white photos. The landlord stated that only sent the coloured photographs to the Residential Tenancy Branch ("RTB") because it was requested by the RTB. During the hearing, I advised the landlord that I could not consider the coloured photographs at this hearing or in my decision because an identical copy was not provided to the tenants as required by Rules 3.1 and 3.10 of the RTB *Rules of Procedure*. I advised the landlord that I could only consider the black and white photographs because these copies were properly served upon the tenants and the RTB prior to this hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the landlord and the owner, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord confirmed that this tenancy began on August 1, 2014 and ended on January 16, 2015. The landlord stated that as per the tenancy agreement, this was a fixed term tenancy to end on August 31, 2015. The landlord noted that a mutual agreement to end tenancy, dated December 22, 2014, was signed by both parties to end this tenancy on January 15, 2015. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 (collectively "deposits") were paid by the tenants and the landlord continues to retain both deposits. The landlord provided a copy of the written tenancy agreement for this hearing. According to the owner, the rental unit is a two-level house that has four bedrooms and two and a half bathrooms, and is approximately 2100 to 2200 square feet total.

The landlord confirmed that a written forwarding address has not been provided by the tenants. The landlord explained that a move-in condition inspection report was completed and signed by both parties on August 1, 2014. The landlord maintained that she completed and signed a move-out condition inspection report without the tenants

present on January 16, 2015. The landlord maintained that no RTB notice of final inspection form was given to the tenants before completing the move-out inspection. She noted that she attended at the property twice on January 16, 2015 and the tenants were still moving their belongings and were not ready to complete the inspection. She stated that she was unable to reach the tenants by telephone after the two attempts, so she completed the move-out inspection alone that same day.

The landlord's application was filed on June 17, 2015. The landlord confirmed that she did not receive written permission from the tenants to retain any amount from their security deposit. The landlord stated that she received verbal permission from the tenants to keep both deposits in order to pay for outstanding rent for this tenancy.

The landlord seeks \$2,430.00 in unpaid rent from the tenants. The landlord confirmed that rent of \$1,430.00 is owed for December 2014, as the tenants paid \$570.00 towards rent for that month. The landlord provided a copy of a 10 Day Notice, dated December 12, 2014, issued to the tenants for failure to pay \$1,430.00 in December 2014. The landlord stated that rent of \$1,000.00 is owed from January 1 to 16, 2015, as the tenants did not pay any amounts towards rent for this month. The landlord confirmed that the tenants' deposits were already applied against the rent owing from December 2014 to January 2015, so the balance due was \$430.00. The landlord confirmed that she was only seeking partial rent for January 2015 against the tenants. She stated that she was not seeking any future fixed term tenancy agreement losses of rent moving forward, based on the mutual agreement reached with the tenants to vacate the unit by January 15, 2015. The landlord provided a rent ledger for the unpaid rent.

The landlord seeks \$245.22 for yard cleaning and a patio screen repair. These areas were in good condition on the move-in condition inspection report but issues were noted with the ripped patio screen door on the move-out condition inspection report. However, no receipt was provided for the purchase of the patio door screen. The landlord provided a receipt, dated March 20, 2015, indicating that \$245.22 was paid for labour and materials for the above repairs. The landlord said that the tenants left garbage around the property and left the yard in a mess. She stated that she hired someone to clean the yard area and dispose of the garbage to the landfill. The landlord provided receipts for the landfill charge and the materials purchased. The landlord did not provide photographs of the yard or the patio screen door. The owner explained that the repairs were done after the new tenants moved in on March 17, 2015, because the owner had a mortgage to pay and was not receiving any money until the new tenants started paying rent.

The landlord seeks \$266.75 for carpet cleaning. The landlord stated that the tenants did not clean the carpets when they vacated the rental unit. The landlord provided a

receipt for this amount. The landlord noted stains in the carpets on the move-out condition inspection report. The landlord provided photographs of the carpet stains. The landlord noted that the carpets were clean and stain-free when the tenants moved in but were stained when they moved out, as per the move-in and move-out condition inspection reports. The landlord confirmed that the carpet cleaning was done on March 2, 2015, before the new tenants moved in, but the invoice was paid after they moved in so that the landlord could pay with the rent money obtained from the new tenants.

The landlord seeks \$630.00 for general cleaning. The landlord claimed that the tenants did not clean when they vacated the unit. The landlord provided a receipt for this cleaning, stating that two people cleaned the unit for a total of 24 hours over three days for \$25.00 per hour. The landlord noted various areas of the unit were dirty in the move-out condition inspection report. The landlord provided black and white photographs of the dirty condition of the rental unit. The landlord confirmed that the owner paid for the cleaning to be done on February 17, 2015, so that the unit could be shown to potential tenants in a presentable condition.

The landlord seeks \$990.00 for carpet replacement in the basement of the rental unit. The landlord confirmed that there was a strong cat smell in the carpets that could not be removed with the carpet cleaning that was done, as noted above. The landlord provided an invoice for the carpet replacement. The invoice indicates an incorrect street address for the rental unit, but the landlord confirmed that this was a typographical error. The landlord also provided an estimate of \$940.00 from another company for the carpet replacement to show another similar figure. The owner confirmed that the carpet was already in the unit when she bought the house in October 2009. She estimated that the carpet was approximately 7 years old. She confirmed that the realtor told her that the basement carpets were renovated two years prior to the purchase of the house in October 2009.

The landlord also seeks \$266.00 for a bed box spring and mattress and \$450.00 for a couch, both of which had to be disposed of because of the strong cat smell. The landlord did not provide receipts for these amounts. The landlord provided an inventory listing the queen-size box spring and mattress, as well as a sectional sofa, being in good condition when the tenants moved in and having a cat smell after the tenants moved out. The landlord provided a witness statement, dated June 17, 2015, from "CK" stating that he attended at the property and the couch, bed and carpets were disposed in order to rid the place of the cat urine smell. The owner also provided an email and testified that she bought the bed around 1997 or 1998 for about \$800.00 and she bought the couch for approximately \$900.00 in October 2009. She stated that she was seeking a reduced value for both in order to account for depreciation.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must show that the tenants caused damage beyond reasonable wear and tear, satisfying 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 other party in violation of the *Act*, *Residential Tenancy Regulation* ("*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 applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or 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 tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss. I award the landlord \$2,430.00 for unpaid rent. I accept the landlord's undisputed evidence that the tenants failed to pay rent of \$1,430.00 in December 2014 and \$1,000.00 January 2015. The landlord provided a rent ledger and 10 Day Notice to show the above unpaid amounts. The landlord has mitigated damages by not claiming for any future losses of rent.

I dismiss the landlord's claim for \$245.22 for yard cleaning and the patio screen door repair. The landlord did not provide a receipt for the purchase of the patio screen door. The landlord did not provide photographs of the ripped patio screen door. The landlord did not provide photographs of the yard or note any issues with the yard. The landlord noted no problems in the "grounds and walks" of the "exterior" of the house in the move-out condition inspection report. Further, these repairs and cleaning were completed after the new tenants moved in, calling into question who caused the damage and/or exacerbated the damage.

I find that the landlord is entitled to \$266.75 for carpet cleaning. The landlord provided a receipt for the above amount. The landlord provided photographs of stains in the carpets and noted these stains in the move-out condition inspection report. Clause 15(b) of the tenancy agreement requires the tenants to clean the carpet at their own

expense at the end of this tenancy. Residential Tenancy Policy Guideline 1 indicates that the tenants will be held responsible for shampooing carpets where they have deliberately or carelessly stained the carpet, regardless of the length of tenancy. Further, the tenants can be expected to clean or shampoo carpets if they have uncaged pets, and the landlord indicated that the tenants had a cat. Therefore, I find that the tenants were responsible to complete this cleaning, that it was necessary to do so and that they failed to clean the carpet upon vacating. Further, the carpet cleaning was done before the new tenants moved in.

I award the landlords \$630.00 for general cleaning of the rental unit. The landlord provided a receipt for this cost. The landlord indicated that various areas were dirty on the move-out condition inspection report and provided photographs of various dirty areas. As per Residential Tenancy Policy Guideline 1, the tenants are required to maintain “reasonable health, cleanliness and sanitary standards” throughout the rental unit during the tenancy and the tenants are also “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.” I find that the tenants did not fully abide by the above guideline at the end of this tenancy and that the above amount is a reasonable amount for cleaning the entire house, which is a large house. Further, the carpet cleaning was done before the new tenants moved in.

I dismiss the landlords’ claims for \$990.00 for replacing the carpets, \$266.00 for the value of the bed box spring and mattress and \$450.00 for the value of the couch, without leave to reapply. The landlord did not provide receipts for the bed and couch values. I find that the landlord failed to prove that the cat smell was beyond a reasonable smell, whereby the entire basement carpet had to be replaced. Although CK provided a witness statement, he is not qualified to deal with carpet replacement, he did not testify at this hearing and did not indicate when he attended at the property. Further, the age of the carpet appears to be at least 9 years old or more, if it was present at least two years prior to the landlord buying the house in October 2009. I find that the landlord was unable to prove the exact age of the carpet. Residential Tenancy Policy Guideline 40 states that the useful life of carpets is 10 years. Therefore, the carpets would likely have to be replaced soon in any event.

Deposits

Section 38 of the *Act* requires the landlord to either return the tenants’ deposits or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants’ provision of a forwarding address in writing. If

that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the tenants are not entitled to double the value of their deposits. The landlord's right to claim against the deposits for damage was already extinguished under section 36 of the *Act*. I find that the landlord did not offer two opportunities for a move-out condition inspection in accordance with section 35(2) of the *Act*. *Residential Tenancy Regulation* ("Regulation") 17(2)(b) requires that the landlord provide a second opportunity for a move-out condition inspection by providing the tenant with a notice in the approved RTB form. The landlord confirmed that she did not provide any notice to the tenants in writing or using an approved RTB form, to offer a second opportunity for a move-out condition inspection. However, the tenants did not provide their forwarding address in writing to the landlord. Providing a written forwarding address as per section 88, triggers the doubling provision in section 38 of the *Act*.

In any event, the landlord is permitted to offset the deposits against other losses that are not damage. The landlords have claimed for a loss of rent in the amount of \$2,430.00 and they have been awarded this amount in my decision.

The landlord continues to hold the tenants' deposits of \$2,000.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the deposits. Although the landlord did not apply to retain the deposits, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' deposits, totalling \$2,000.00, in partial satisfaction of the monetary award.

Filing Fee

As the landlord was only partially successful in this Application, I find that the landlord is not entitled to recover the filing fee. The landlord must bear the cost of the \$50.00 filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,326.75 against the tenants as follows:

Item	Amount
Rent	\$2,430.00
Carpet Cleaning	266.75
Cleaning	630.00
Offset Security and Pet Damage Deposits	-2,000.00
Total Monetary Award	\$1,326.75

The landlord is provided with a monetary order in the amount of \$1,326.75 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.

The landlord's application for \$1,951.22 for yard cleaning, a patio screen door repair, carpet replacement and the value of a bed and couch, are dismissed without leave to reapply.

The landlord's application to recover the \$50.00 filing fee is dismissed without leave to reapply.

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: December 02, 2015

Residential Tenancy Branch

