



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$3121.92 for the cost of removing personal belongings, cleaning and damages
- c. An order to keep the security deposit.
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondents although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenants by mailing, by registered mail to where the tenants' reside on August 27, 2015.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on December 1, 2012, continue for one year and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$2200 per month payable in advance on the first day of each month.

The tenants paid a security deposit of \$1100, a deposit for the remote in the sum of \$150 and a key deposit of \$25 for a total of \$1275.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

The landlord relies on a term in their tenancy agreement that provides that if the walls are professionally painted at the start of the rental period, the Tenant will pay for professional painting at the end of the rental period.

Section 32 of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 5 of the Act provides as follows:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 1 of the Residential Tenancy Act Regulations provides as follows:

Application of the *Residential Tenancy Act*

1 (1) The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the *Residential Tenancy Act* or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.

I determined the tenancy agreement which attempts to impose a higher standard than is provided in the Act and Regulations is of no effect.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. The landlord testified she paid \$2360 for the cost of unit clean up, unit repairs, garbage removal, drywall repairs and painting. The invoice relied on by the landlord does not break the total into separate parts. However, the landlord testified the rental unit was previously painted prior to the start of the tenancy at a cost of \$1400. I determined \$1400 is a reasonable assessment of the cost to paint the rental unit. It is a two bedroom unit of approximately 1140 square feet. Policy Guideline #40 provides that the expected life of an internal paint job is 4 years. The tenants were in the rental unit for approximately 28 months. I determined the landlord is entitled to the depreciated value of this claim which I determined to be \$583 ($\$1400 \times 20/48 \text{ months} = \583).
- b. I determined the landlord is entitled to \$960 for the cost of cleaning, garbage removal and unit repairs.
- c. The landlord claimed the sum of \$761.92 for the cost of replacing carpets. The carpets were approximately 3 years old prior to the tenant taking possession which lasted just 28 months. Thus the landlord has received 64 months of wear. Policy Guideline #40 provides that the expected life of a carpet is 10 years or 120 months. The landlord had to purchased new carpets earlier than expected has

lost the use of the carpet for 56 months. In the circumstances I determined the landlord is entitled to \$355 ($\$761.82 \times 56 \text{ months} / 120 \text{ months} = 355$).

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$1898 plus the \$50 filing fee for a total of \$1948.

Security Deposit

I determined the deposits held by the landlord total \$1275. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$673.

Conclusion

In summary I ordered that the landlord shall retain the deposits totalling \$1275. I further ordered that the Tenants pay to the landlord the sum of \$673 in satisfaction of this claim.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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 section 9.1(1) of the Residential Tenancy Act.

Dated: February 04, 2016

Residential Tenancy Branch

