



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1003 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord testified that the tenant informed him that she had no intention of attending today's hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with notice of this reconvened hearing by registered mail to the address the tenant provided by text message as her forwarding address. The landlord provided me with a tracking number. With the landlord's consent I viewed the tracking information for that mailing. The tracking information confirmed that someone by the tenant's name signed for that mailing. On the basis of this evidence, I find that the tenant was served with notice of the reconvened hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

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

This tenancy began 1 May 2013. Monthly rent of \$740.00 was due on the first. The landlord collected a security deposit in the amount of \$370.00 at the beginning of the tenancy.

The landlord provided me with photographs of the condition of the rental unit at the beginning of the tenancy. The photographs show a clean and well maintained rental unit.

On 29 October 2015 the landlord issued a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). The tenant applied to cancel that notice. That application was set to be heard 4 January 2016.

The tenant did not pay rent due 1 December 2015.

The tenant vacated the rental unit on 19 December 2015. The tenant did not inform the landlord that she intended to vacate the rental unit. The landlord received a text from the tenant stating that she had vacated on or about 19 December 2015.

The landlord testified that it did not appear that the tenant made any effort to clean the rental unit at the end of the tenancy. The landlord testified that the carpets were dirty, the rental unit was dirty, and the tenant left debris behind. The landlord provided photographs of cans full of cigarette debris, garbage inside and outside of the rental unit.

The landlord provided me with an invoice for carpet cleaning in the amount of \$148.60.

The landlord testified that it will cost between \$225.00 and \$312.00 to clean the rental unit based on estimates received from two separate professional cleaners.

The landlord testified that the tenant damaged the walls of the rental unit. The landlord testified that the tenant drilled a $\frac{3}{4}$ inch hole through a wall. The landlord testified that the tenant attempted to patch a hole in one of the walls, but that this patch is inadequate and will have to be redone. The landlord testified that the tenant smoked in the rental unit contrary to the tenancy agreement. Smoking is prohibited by virtue of clause 2 of the addendum to the tenancy agreement. The landlord testified that as a result of the tenant's smoking, the landlord will have to repaint the ceiling as it was stained from the smoke. The landlord testified that the rental unit was last repainted five years ago.

The landlord provided me with a quote for repairing and repainting the rental unit in the amount of \$2,350.00. The landlord testified that he has used this painting company in the past and knows them to be of good quality at a reasonable price. The quote sets out that the repairs will cost \$100.00, painting the walls will cost \$1,600.00, and painting the sealing will cost \$650.00.

The landlord testified that the tenant pulled out the existing telephone line that was connected to the upstairs and replaced it with a DSL jack. The landlord testified that another phone line was removed from the area of the wall it had been. The landlord estimates that it will cost \$50.00 per phone outlet to repair plus other specified costs.

The landlord testified that he has not yet completed the repairs as he has been ill. The landlord testified that there are currently no occupants in the rental unit.

Analysis

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The tenant is 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. ...

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

On the basis of the evidence before me, I find that the tenant failed to clean the carpet at the end of the tenancy. I find that the tenant breached subsection 37(2) by failing to clean the carpet. As the result of the tenant's breach of subsection 37(2) of the Act, the landlord incurred the cost of carpet cleaning. The landlord provided a receipt showing that he incurred costs of \$148.60 in carpet cleaning. I find that the landlord has proven a loss in the amount of \$148.60 for cleaning the carpet. The landlord is entitled to recover this amount.

On the basis of the uncontested evidence before me, I find that the tenant failed to clean the rental unit at the end of the tenancy. I find that the tenant breached subsection 37(2) of the Act by failing to clean the rental unit. As result of the tenant's failure the landlord will have to clean the rental unit by himself or by hiring professional cleaners. The landlord provided quotes for cleaning that range from \$225.00 to \$312.00 for cleaning. On the basis of the photographs provided of the state of the rental unit, these seem to be reasonable quotes. On this basis, I find that the landlord has substantiated a loss in the amount of \$225.00, the lesser of the two quotes.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

On the basis of the uncontested evidence before me, I find that the tenant or persons permitted in the rental unit by the tenant caused damage to the rental unit. In particular, the tenant caused damage to the walls, ceiling, and phone connections. I find that failure to repair this damage by the end of the tenancy constitutes a breach of subsections 32(3) and 37(2) of the Act. I find that as a result of these breaches, the tenant caused the landlord to incur costs of repair.

The landlord has not actually conducted any of the repairs. The landlord provided me with an estimate for repairing the walls in the amount of \$100.00. The landlord provided

me with an estimate for repainting the walls in the amount of \$1,600.00. The landlord provided me with an estimate for remediating the smoke damage in the amount of \$650.00. I accept the landlord's testimony that the quote for repairs and painting is reasonable.

I find that the landlord is entitled to recover \$100.00 for repairing the walls. I find that the landlord is entitled to recover \$650.00 for repairing the smoke damage to the ceiling.

The landlord seeks the cost of repainting the walls. *Residential Tenancy Policy Guideline* "40. Useful Life of Building Elements" provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of interior paint is four years. The landlord testified that the interior paint was five years old. As such, the capital value of the interior paint has fully depreciated and has no value. On this basis, I find that the landlord is not entitled to recover the cost of repainting the rental unit.

The landlord has not provided me with any quote or explanation of how he determined the cost of repairing the telephone jacks was \$50.00 per jack. Pursuant to section 67 of the Act, a claimant must substantiate the amount of his or her loss. On this basis, I find that the landlord has failed to substantiate the amount of his loss. The landlord is not entitled to recover for the telephone jack damage.

The landlord testified that the tenant did not pay rent for December in the amount of \$740.00. Pursuant to section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement. There is no evidence before me that indicates the tenant was entitled to withhold any amount from rent. On this basis the landlord has proven his entitlement to rent for December in the amount of \$740.00.

Pursuant to subsection 57(2) of the Act, a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. The tenant refused to vacate the rental unit in accordance with the 1 Month Notice and overheld the rental unit. The tenant did not issue any notice of her own. By failing to abide by the 1 Month Notice of give notice of her own the tenant left the landlord in an uncertain position with respect to finding new tenants. This is especially true given that the tenant left the rental unit unclean and damaged. I find that by breaching sections 32 and 37 of the Act and by overholding the unit, the tenant caused the landlord a rental loss for January. On this basis, the landlord is entitled to recover a loss amount of \$740.00.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in his application, he is entitled to recover his filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,283.60 under the following terms:

Item	Amount
Carpet	\$148.60
Cleaning	225.00
Wall Repair	100.00
Celling Repair	650.00
December Rent	740.00
January Rent Loss	740.00
Recovery of Filing Fee for this Application	50.00
Less Security Deposit	-370.00
Total Monetary Order	\$2,283.60

The landlord is provided with this order 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 08, 2016

Residential Tenancy Branch