



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAGSEN REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for damage or loss to the unit 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; as well as to recover the filing fee for this application from the tenant?

The landlord provided sworn undisputed testimony that he sent his Application for Dispute Resolution by registered mail on November 13, 2015 to the tenant at the forwarding address provided. The landlord submitted a Canada Post receipt and tracking number for the registered mailing. Based on the testimony of the landlord and the evidence submitted, I find that the tenant was deemed served with the landlord's Application for Dispute Resolution and materials on November 18, 2015 (5 days after its registered mailing) in accordance with section 89 and 90 of the Act and Residential Tenancy Policy Guideline No. 12.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Background and Evidence

This tenancy began on January 1, 2014 as a one year fixed term tenancy with a rental amount of \$1350.00 payable on the first of each month. The landlord testified that he continues to retain a \$675.00 security deposit paid by the tenant on December 13, 2013. The landlord submitted a copy of the residential tenancy agreement and the two page addendum to that agreement.

The landlord submitted a move-in and move-out condition inspection report signed by both parties. The condition inspection report provides the forwarding address of the tenant and is dated October 31, 2015. Under the portion of the condition inspection report where it provides that the tenant may agree to deductions, the report states “security deposit at cost”. The condition inspection report indicates the keys were not returned; that the paint required touch up; that the carpet required replacement; and that the stove and other appliances were dirty at the end of the tenancy.

The landlord provided a one page handwritten note titled “Apartment re-inspection” and dated November 3, 2015,

Upon re-inspection, the following items have been found.

1. Switch near entrance door does not work well (keep pressing the button, otherwise the light will not be on)
2. Some black stains on carpet on hallway near entrance
3. Red stain on carpet in (illegible)
4. Carpet from den to kitchen has been cut out and replaced with a different type of carpet
5. 2 red stains on carpet in living room
6. Drawings on wall under picture have been removed
7. Metal part above micro-wave oven was off
8. Exhaust fan cooler in washroom was off
9. Oven has been cleaned but still some stains inside

The landlord submitted an invoice for carpet cleaning totalling \$1123.81 as well as a photograph of the residence hallway showing a patchwork carpet repair. The landlord testified that this building dates to 2008. He testified that he believed all of the materials within the unit were original – none had been upgraded or replaced. The landlord testified that he is hoping to replace the carpet but has not done so as yet. He submitted a quote of \$1600.00 with an evaluation note included stating,

Carpets located at the hallway next to bedroom and washroom and partial of the living room has been replaced with low quality carpets. Replaced carpets are not the same colour as the original, and they are not correctly pinned on the edges. New carpets to be installed for the whole unit is recommend (sic) to provide a unison look.

The landlord sought to retain the tenant's security deposit towards any monetary order.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the landlord has proven loss as a result of this tenancy by the evidence submitted for this hearing. I find that the landlord has proven that the damage is as a result of this tenancy and the actions, in violation of the agreement and in contravention of the *Act*, of the tenant. The landlord has submitted a report and quote with respect to the carpet to prove the cost of the damage to the unit.

In this case, the landlord acknowledges that the carpets within the residence were dated, approximately 7-8 years old at the end of the tenancy (to 2008). Residential Policy Guideline No. 40 establishes the lifespan of building elements. The guideline provides a lifespan for carpets of approximately 10 years. The landlord's undisputed sworn testimony is that the carpets were in good condition prior to the 1 year tenancy. The move-in condition inspection report, signed by the tenant, indicates the carpets were in good condition. I find that, despite their age, but for the damage done by the tenant in staining the carpets and cutting portions out to be replaced with a mismatched colour, the carpets would have had some useful life remaining. Based on this finding, the landlord is entitled to receive some compensation towards the replacement of the carpets.

In assessing the photographic, documentary evidence with respect to these carpets with a useful life of approximately 10 years and determining based on the useful life guidelines that the carpets would likely be replaced in the next 2-3 years, I find that the tenant can only be held responsible for a portion of the cost of the carpet replacement. However, I also note that the actions by the tenant with respect to the carpet were in contravention of the *Act*. Therefore, I find the landlord is entitled to an award in nominal damages totalling \$625.00.

The landlord testified that he continues to retain the security deposit paid by the tenant at the outset of the tenancy. In accordance with section 72, the landlord is entitled to retain the security deposit to satisfy the monetary award.

As the landlord was successful in this application, I find the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I allow the landlord to retain the tenant's \$675.00 security deposit.

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: June 9, 2016

Residential Tenancy Branch