



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANSON REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, 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 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 the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) provided undisputed affirmed evidence that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 14, 2016 and again on April 21, 2016. The tenant confirmed receipt of both the landlord's notice of hearing package and the submitted documentary evidence as claimed by the landlord. The tenant also confirmed that no documentary evidence was submitted by the tenant for the hearing.

At the outset, the landlord stated that she was lowering the monetary claim from \$699.25 to \$524.25. The landlord has also withdrawn the last two portions of the monetary claim. The tenant confirmed their understanding and raised no issues.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed for compensation or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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

This tenancy began on October 1, 2013 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated September 24, 2013. The monthly rent is \$2,700.00 payable on the 1st day of each month and a security deposit of \$1,400.00 was paid. Both parties confirmed that the landlord return \$875.75 of the original \$1,400.00 security deposit and withheld pending the outcome of the dispute, \$524.25.

The landlord seeks an amended monetary claim of \$424.25 which consists of:

- \$183.74 Damages, replacing grill and filter of microwave/fan
- \$115.50 Carpet cleaning
- \$125.00 Blind cleaning

The landlord provided affirmed testimony that at the end of the tenancy it was discovered that the tenant had left the rental unit dirty and damaged requiring cleaning and repairs. The landlord stated that at the start of the tenancy the rental unit was new and that the tenant was the first to occupy the rental unit as shown by the submitted copy of the signed tenancy agreement and the condition inspection report for the move-in. The landlord states as shown by the submitted 11 photographs that the tenant left the rental unit dirty and damaged and referred to the kitchen cabinet damage, discolored microwave handle, badly stained balcony door blinds, missing part of the window in the master bedroom and stained and soiled carpeting.

In support of the landlord's claim documentary evidence was submitted consisting of:

- 11 photographs of the condition of the rental unit at the end of tenancy
- Copy of the completed condition inspection reports for the move-in and the move-out
- Copy of cheque for \$875.00 issued to the tenant
- Copy of a receipt dated January 12, 2016 for \$125.00 for Blind fixing/cleaning
- Copy of receipt dated January 7, 2016 for \$115.50 for Carpet Cleaning of "v. soiled carpet in br." for \$115.50.

Copy of receipt dated January 12, 2016 for \$183.75 for replacement parts (grill+filter)

4 photographs of the condition of the blinds, carpet and microwave after cleaning and repairs

The tenant disputed the landlords claim stating that the carpet quality was inferior causing the carpet to be stained easily. The tenant also claimed that due to the heat from the gas stove, the microwave was prone to easy staining when reacting to chemical cleaners. The tenant conceded the landlord's claim for \$125.00 of blind cleaning.

The landlord responded to the tenant's claims stating that the heat from the gas stove would not only cause staining in a particular area as shown by the photographs. The landlord stated that if it were the case, the staining would be uniform across the grill. The landlord claims that this is a result of poor cleaning.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the evidence provided by both parties and find on a balance of probabilities that the tenant's claims that the quality of the carpet was so poor that it would make staining the carpet very easy. The tenant has failed to provide sufficient evidence to support this portion of his claim. The tenant has also failed to provide sufficient evidence to satisfy me that the microwave grill staining was as a result of a chemical reaction to a cleanser and the heat from the gas stove. In any event, the tenant has not disputed that the rental unit new at the beginning of the tenancy as was like new or that it was left with stained carpet, blinds and a microwave grill at the end of the tenancy. As such, I find that the landlord is entitled to the claim filed of \$524.25.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

The landlord has established a total monetary award of \$524.25. In offsetting the landlord's claim of \$524.25 against the amount held back by the landlord, I order that the landlord may keep it in full satisfaction of the claim.

Conclusion

The landlord may retain the \$524.50 currently held in full satisfaction of the monetary award.

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: August 25, 2016

Residential Tenancy Branch