



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, FF

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on June 1, 2015 and ended on December 31, 2015. The tenants were obligated to pay \$800.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$400.00 security deposit. The landlord stated that the tenants moved into a brand new suite of a brand new home that had never been rented. The landlords stated that a condition inspection report was not conducted at move in or move out with the tenants.

The landlord stated that the tenants burnt and bent a kitchen blind, spilt bleach on the carpet, chipped, and caused dents and scribbles on the walls requiring them to be painted. The landlord stated that she also had to clean the unit with the help of her mother. The landlord stated that due to the poor condition the unit was left in they were unable to rent the unit for a month and seek loss of revenue for January 2015. The landlord stated that they also seek the registered mail costs and recovery of the filing fee for this hearing.

The landlord is applying for the following:

1.	Blind	\$70.00
2.	Carpet World Ltd replace carpet	\$325.00
3.	Mann Pro Painting	\$600.00
4.	Canada Post	\$61.69

5.	Cleaning	\$200.00
6.	Loss of Revenue	\$800.00
7.	Filing fee	\$100.00
	Total	\$2156.69

The tenants advocate made the following submissions. The advocate submits that the unit was not new when the tenants moved in as they were informed by the landlord that they had evicted the previous tenants. The advocate submits that without the condition inspection report it very difficult for the landlord to prove that the subject tenants caused this damage. The advocate submits that the landlord has not shown that the tenants were responsible for any of the damage. The advocate submits that the landlord has failed to provide any evidence of the landlord mitigating their losses in attempting to re-rent the unit. The advocate submits that the landlord could not provide any clear evidence to their claim for cleaning, i.e. hours of labour; cleaning supplies and what specifically were done. The advocate submits that the landlords' application should be dismissed.

Analysis

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 arguments are reproduced here. The principal aspects of the landlords claim and my findings around each are set out below.

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.

Blind Replacement, Carpet Replacement and Painting

The tenants dispute this claim. The tenants stated that they did not cause any of the damage as alleged and that the unit had deficiencies when they moved in. It was explained in great detail to the landlord the vital and useful nature of the inspection report.

Without the condition inspection report or any other supporting documentation such pre tenancy and post tenancy photos, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord stated that she did not know she had to conduct a move in condition inspection report. The landlord has not provided sufficient evidence to support this portion of their claim and I therefore dismiss this portion of their application.

Cleaning

The tenants dispute this claim. The tenants stated that they cleaned the unit and was left in move in ready condition. The landlord stated that she and her mother cleaned the unit but when asked how many hours she cleaned and how she came to the amount as claimed she stated “ I’m’ not sure, ten or fifteen dollars an hour, I don’t remember. I think we cleaned for five or six hours, I think”. I find that the landlords’ testimony was vague and lacking the detail required as outlined in Section 67 of the Act. Based on the unclear and insufficient evidence before me, I dismiss this portion of the application.

Loss of Revenue

The tenants dispute this claim and stated that the unit was in move in ready condition. As I have found that the landlord was unable to provide sufficient evidence to show that the tenants were responsible for the damage, I therefore find that their actions were not the cause of the landlords’ rental loss. In addition, the landlord did not provide any information as to the attempts made to rent the unit; as to how often it was advertised or if there was a rent reduction, a month to month term or short term lease to entice potential renters. Based on the above I dismiss this portion of the landlords’ application.

Canada Post

The Residential Tenancy Act does not give an Arbitrator the jurisdiction to address the recovery of postage costs and therefore the landlord must bear this cost.

The landlord has not been successful in their application.

Conclusion

The landlords' application is dismissed in its entirety. The landlord is to return the security deposit back to the tenant. I grant the tenant an order under section 67 for the balance due of \$400.00. This order may be filed in the Small Claims 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: August 09, 2016

Residential Tenancy Branch