



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain 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, pursuant to section 72 .

The landlord's agents, DL and CG, testified on behalf of the landlord in this hearing and were given full authority to do so by the landlord. The tenant's mother, CA, testified on behalf of the tenant in this hearing and was given full authority to act as his advocate by the tenant. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant's advocate confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the Act, I find that the tenant was duly served with the Application.

The landlord's agent, DL, testified that the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant by posting it on the door on October 2, 2016, with an effective date of October 15, 2016. The tenant's advocate testified that the tenant had vacated the rental unit pursuant to the 10 Day Notice. As the tenancy has ended, the landlord's application for an order of possession is dismissed.

The landlord is still seeking a monetary order for unpaid rent, the filing fee, as well as the compensation for the cost of carpet cleaning.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage to the rental unit?

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

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord's agent, DL, testified regarding the following facts. This month-to-month tenancy began on December 1, 2015. Monthly rent in the amount of \$840.00 plus \$10.00 gas surcharge was payable on the first day of each month. A security deposit of \$420.00 was paid by the tenant and the landlord continues to retain this deposit.

The landlord issued the 10 Day Notice, indicating an effective move-out date of October 15, 2016. As the tenant had moved out on October 31, 2016, no Order of Possession is required. The landlord's agent, DL, testified that the tenant has not paid rent of \$850.00 for the month of October 2016. The landlord seeks a monetary order of \$632.90, which includes the \$850.00 rent for October, the cost of the carpet cleaning in the amount of \$102.90, the \$100.00 filing fee minus the \$420.00 security deposit still held by the landlord.

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.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Paragraph 37(2)(a) of the *Act* places a responsibility on a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The tenant's advocate did not dispute the evidence that the tenant failed to pay rent of \$850.00 for the month of October 1, 2016. I find that the landlord is entitled to the \$850.00 in unpaid rent.

The landlord's agent CG confirmed that there was no damage to the apartment, but the landlord is seeking compensation for the professional carpet cleaning as required by line #23 of the written tenancy agreement in the amount of \$102.90. The landlord testified that the carpet was in new condition, and the tenancy agreement requires the tenant to professional clean the carpet upon move-out. The tenant's advocate did not dispute this. I find that the landlord is entitled to a monetary award of \$102.90 for the professional carpet cleaning.

The landlord continues to hold the tenant's security deposit of \$420.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$420.00 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

As the tenant has moved out on October 31, 2016, the landlord's application for an Order of Possession is withdrawn.

I order the landlord to retain the tenant's security deposit of \$420.00 in partial satisfaction of the monetary claim.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee.

I issue a \$632.90 monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, damage in the form of carpet cleaning and the filing fee, and also allows the landlord to retain the tenant's security deposit:

| | |
|---|-----------------|
| Rental Arrears for November 2016 | \$850.00 |
| Professional Carpet Cleaning | 102.90 |
| Less Security Deposit | -420.00 |
| Recovery of Filing Fee for this application | 100.00 |
| Total Monetary Award | \$632.90 |

The tenant must be served with this Order as soon as possible. Should the tenant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 19, 2016

Residential Tenancy Branch