



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to retain all or a portion of their security deposit in partial satisfaction of their claim pursuant to section 38;
- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and 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 acknowledged receipt of the landlords' documentary evidence. The tenant did not submit any documentation for this hearing.

Issue to be Decided

Is the landlord entitled to a monetary award for damage 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, Evidence

The landlords' testimony is as follows. The tenancy began on August 15, 2015 and ended on August 31 2016. The subject unit came furnished. The tenants were obligated to pay \$2450.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1225.00 security deposit and a \$1225.00 pet deposit. The landlord testified that a written condition inspection report was conducted at move in. The landlord testified that at the move out condition inspection, the tenant did not agree with the condition of the unit as reported by the landlord and refused to sign over the security deposit. The landlord testified that the unit need extensive cleaning resulting in the following costs; \$450.00 for suite cleaning, \$377.00 for upholstery

cleaning of a chair, \$28.00 to replace a window screen, and \$169.00 to replace a rug. The landlord testified that \$1401.00 of the deposits has been returned and that they hold \$1049.00 as of today's hearing.

The landlord seeks the following:

Item	Amount
Suite Cleaning	\$450.00
Upholstery Cleaning	377.00
Window Screen Replacement	28.00
Rug Replacement	169.00
Less Security Deposit	-1049.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$75.00

The tenant gave the following testimony. The tenant testified that he accepts responsibility for the broken window screen. The tenant testified that he disputes the remainder of the landlords claim. The tenant testified that they spent numerous hours cleaning the unit and that he may have missed a couple of things but feels that they should only be entitled to a maximum of 20-30 minutes of labour costs. The tenant testified that he was willing to go back into the unit to clean but was denied access by the property manager at that time. The tenant testified that the chair was never used by them and put into storage as soon as they moved in. The tenant testified that the rug that the landlord purchased is not a fair replacement for the one that was already there. The tenant testified that it was an old indoor outdoor rug that cost about \$15.00.

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 landlord's 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.

The tenant accepted responsibility for the broken window screen. Based on that acknowledgement I find that the landlord is entitled to \$28.00.

At the outset of the hearing the agent that represented the landlord advised that she “was coming into this file cold” as a former employee had handled this tenancy from beginning to end. I accept and appreciate the agent’s candor; however that does not relieve the landlord from providing sufficient evidence to prove their claim.

The remainder of the landlords’ claim falls for the following reasons. The landlord was unsure as to the age of the carpet and whether it was the actual carpet that belonged to this unit. The landlord was unable to explain why the tenant was denied access to the unit to remedy the cleaning deficiencies and thus did not allow the tenant to mitigate the cleaning charges. In addition, the photos provided by the landlord do not depict the unit as described and do not justify the costs as claimed. The landlord was also unable to dispute whether the chair was in storage or explain the exorbitant cost to clean it. Furthermore the receipts provided for the cost of cleaning the upholstery on the chair does not match the amount as claimed. Based on the insufficient and deficient evidence before me, I dismiss the remainder of the claim.

The landlord must bear the cost of the filing fee for this application. The landlord is entitled to retain \$28.00 from the security deposit and return the remaining \$1021.00 to the tenant.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$1021.00. 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: February 02, 2017

Residential Tenancy Branch