



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNR MNDC FF

Introduction

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

- a monetary order for unpaid rent or utilities pursuant to section 67;
- and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties were in attendance I confirmed that there were no issues with service of the landlord's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the landlord's application and evidence. The tenants did not submit written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to compensation for money owed or loss under the *Act*, regulation, or tenancy agreement?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on November 1, 2016, with monthly rent set at \$1,300.00. The landlord still holds a \$650.00 security deposit. The tenants moved out on December 28, 2016 as the tenancy was to end on December 31, 2016.

The landlord provided the following list of damages for her monetary claim:

Item	Amount
4 Hours of Cleaning x \$35/hour	\$140.00
Floor Damage	350.00
Unpaid Utilities for November & December 2016	529.42
Carpet Cleaning (Machine Rental & 2 hours labour)	115.83
Painting & Repairs	120.00
Wax Removal from Bedroom Wall	35.00
Damage to Storage Unit in Carport	50.00
Recovery of Filing Fee for this Application	100.00
Security Deposit	-650.00
Total Monetary Order Requested	\$790.25

The landlord testified that the damage left by the tenants exceeded the value of the security deposit, which the tenants allowed the landlord to keep. The landlord provided in evidence a signed email dated December 27, 2016 from the tenants stating that the tenants planned on vacating the premises at midnight on December 27, 2016 and that they agreed to \$167.00 in remuneration for the early move out. The tenants also stated that they had “agreed that our damage/security deposit may be used to cover the cost of utilities and any damages/cleaning required on vacating the property in question”.

The landlord stated that the tenants caused considerable damage to the suite which included damage to the floor and walls. The landlord testified that a move in and move out inspection was completed for the rental unit, and copies were provided in the landlord’s evidence. The landlord’s new tenant, JM, testified as a witness in this hearing that the floor was scratched, and that cigarette butts littered the property. The landlord provided photos in evidence to show the cigarette butts. JM testified that there were burn marks where the tenants had decided to put out their cigarettes in the carport, and there were holes from picture frames all over the living and dining room walls. She testified that the carpets were extremely dirty, and not steam cleaned, and that the

entire kitchen was not cleaned and covered in grease. She testified that there was also candle wax on the wall and stairwell. JM was given \$150.00 off her rent and an early move-in date in return for cleaning the suite.

In support of her monetary claim the landlord provided utility statements for the unpaid utilities. The landlord did not provide receipts or invoices for cleaning as some of the work was done by the landlord, and not a professional service. The landlord obtained estimates from a contractor to fix the damages listed in her monetary claim.

The tenants testified that they did not have time to clean the carpet and do not dispute the landlord's monetary claim for the carpet cleaning and utilities totalling \$645.25. The tenants testified that they had cleaned all day before vacating the suite, and that the landlord's claims were for wear and tear, and not damage. The tenants testified that the landlord had altered the inspection report after the inspection report was signed by them, and that the report was not accurate. The tenants testified that they had protected pads on their furniture, and did not damage the floor, or walls. The tenants did not dispute the email to the landlord stating that the landlord may retain the full security deposit to cover the cost of the utilities, and any damage or cleaning required.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the tenants gave their written authorization to the landlord to keep the \$650.00 security deposit for the utilities and any cleaning or damage in the suite. Accordingly I find that the landlord is entitled to keep the tenant's security deposit of \$650.00. The landlord is seeking an additional \$690.25 plus the \$100.00 filing fee for damages that exceed the value of the security deposit.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord provided sufficient evidence to show that the tenants did not take reasonable care and attention when vacating the suite. The tenants, in their correspondence to the landlord, indicated that they expected their security deposit would cover the cost of utilities and any damage or cleaning required on vacating the property. Although I do not expect that the tenants had anticipated that their security deposit would not be sufficient to cover these costs, I do find that the landlord had established that the tenants had the expectation that the landlord would be responsible for the damages and/or cleaning that would be required upon move-out. The tenants' letter did not contain any clause or statement that, by forfeiting their deposit, this constituted a final resolution of any future claims for damages to the suite. Accordingly I find that the landlord was not barred from filing for additional compensation for damages exceeding the value of the deposit.

In the hearing, the landlord provided sworn witness testimony to support her claims, as well as photos, an inspection report, and estimates. The landlord provided very specific references to the damages that had occurred such as cigarette burn marks and wax on the walls, which the witness confirmed in her testimony. Accordingly I find the landlord is entitled to compensation for these damages in the amount of \$140.00 for four hours of cleaning, and \$85.00 for the damage caused by the wax and cigarettes. The tenants, in the hearing, consented to the landlord's monetary claim for the unpaid utilities totaling \$529.42, and \$115.83 for the cost of the carpet cleaning. I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

The tenants disputed the testimony of the landlord that they had damaged the wall and floors. Although the landlord did provide estimates, the landlord did not provide any invoices for any repairs that were completed, or any receipts for materials used. In the absence of these things I find that the landlord did not establish that there was sufficient damage to justify this portion of the landlord's monetary claim. I therefore dismiss this portion of the landlord's monetary claim.

Conclusion

I issue a monetary Order in the amount of \$320.25 in the landlord's favour under the following terms which allows a monetary award for damage caused by the tenants and allows the landlord to retain the security deposit. The landlord is also authorized to recover \$100.00 for the filing fee.

Item	Amount
4 Hours of Cleaning x \$35/hour	\$140.00
Unpaid Utilities for November & December 2016	529.42
Carpet Cleaning (Machine Rental & 2 hours labour)	115.83
Wax Removal from Bedroom Wall	35.00
Damage to Storage Unit in Carport	50.00
Recovery of Filing Fee for this Application	100.00
Security Deposit	-650.00
Total Monetary Order	\$320.25

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants 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: April 24, 2017

Residential Tenancy Branch