



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MND, MNDC, MNSD

Introduction

This is an application brought by the Landlord(s) requesting a monetary order in the amount of \$1470.00, and requesting recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the respondent prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed

Preliminary Matter

At the beginning of the conference call the landlord stated that, he had just taken over the file, and realized that no evidence had been submitted by the landlords to the Residential Tenancy Branch for today's hearing, and he requested an adjournment, to allow him time to submit the evidence.

It is my decision that I will not allow an adjournment, as the applicants failed to meet the time frame in which to serve their evidence, and since the tenants provided their evidence well within the time frame, I am not willing to grant an extension of time for the landlord's to serve their evidence.

Issue(s) to be Decided

The issue is whether or not the applicants have established monetary claim against the respondents, and if so in what amount.

Background and Evidence

The parties agree that the tenant paid a security deposit of \$492.50 on March 1, 2016.

The parties agree that this tenancy began on April 1, 2016 as a fixed term tenancy with an expiry date of March 31, 2017.

The parties also agree that this tenancy ended on October 31, 2016.

Parties also agree that a move in inspection report was done at the beginning of the tenancy, and a moveout inspection report was done at the end of the tenancy.

The landlord stated that they are withdrawing their claim of \$110.00 for suite cleaning, as the tenant has provided them with evidence of having paid for that cleaning.

The landlords testified that, at the end of the tenancy, they found the carpets in the rental unit had not been cleaned, and that they were stained beyond repair, with what looked like a bleach stain. They further stated that the carpets were five years old at the beginning of the tenancy and the cost to replace the carpet in one bedroom is \$860.00.

The landlords also stated that there is a liquidated damages clause in the tenancy agreement that requires the tenant to pay \$500.00 if the tenant vacates a rental unit prior to the end of the fixed term. This tenancy was to continue until March 31, 2017, however, as stated above, the tenants left well before the end of that fixed term, vacating the rental unit on October 31, 2016.

The landlords are therefore requesting a monetary order as follows:

Cost to replace carpet	\$860.00
Liquidated damages	\$500.00
Filing fee	\$100.00
Total	\$1460.00

The landlords further request an order to retain the full security deposit of \$492.50, and request that a monetary order be issued for the balance.

The tenant testified that the carpet in the rental unit was already stained when they did the move-in inspection at the beginning of the tenancy, and it was even noted on the move-in inspection report that there were marks on the carpet. He further states that they left the carpets in as good condition as they found them, other than normal wear and tear.

The tenant further testified that, he did vacate the rental unit prior to the end of the tenancy, however he did so because it is his belief that the landlord breached a material term of the tenancy agreement by failing to deal with a rust problem on the bathtub which posed a safety risk to his children. He further states that he had asked the landlord to deal with the issue, however the landlord has not done so and therefore, since the landlord was failing to rectify the problem, he gave notice to end the tenancy and vacated.

The tenant therefore requests that the landlord's full claim be dismissed.

In response to the tenant's testimony, the landlord stated that there were some marks on the carpet at the beginning of the tenancy but they were just small marks and these are large bleach like marks, which were not there at the beginning of the tenancy.

The landlord further stated that, they do not believe the rust issue on the bathtub was a breach of a material term of the tenancy agreement, as it is fairly minor, and they never received any written request from the tenant to deal with the rust issue.

Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent, that burden of proof is not met.

In the claim for replacing the carpets it is just the landlord's word against that of the tenants, and the tenant denies causing any damage to the carpets in the rental unit, and therefore it's my finding that the landlords have not met the burden of proving that the tenants damaged the carpets.

I therefore will not allow the landlords claim for replacing the carpets.

I will, however, allow the landlords claim for the liquidated damages. The tenant claims that he vacated the rental unit due to a material breach of the tenancy agreement however section 45(3) of the Residential Tenancy Act states:

45(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period *after the tenant gives written notice of the failure*, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. (My emphasis)

In this case there is no evidence to show that the tenant ever gave the landlord written notice of any failure to comply with a material term of the tenancy agreement, and therefore the tenant did not have the right to end the tenancy prior to the end of the fixed term.

As I have not allowed the landlords full claim, it's my decision that the landlord and the tenants must split the cost of the filing fee.

Therefore the total amount of the landlord's claim that I have allowed is as follows:

Liquidated damages	\$500.00
½ Filing fee	\$50.00
Total	\$550.00

Conclusion

Pursuant to section 67 and 72 of the Residential Tenancy Act I have allowed \$550.00 of the landlords claim and therefore, pursuant to section 38 of the Residential Tenancy Act, I order that the landlord may retain the full security deposit of \$492.50, and I have issued a monetary order for the respondents to pay \$57.50 to the applicants.

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: May 15, 2017

Residential Tenancy Branch