



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes MND MNR MNSD FF

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant and landlord attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord was represented at the hearing by Property Manager, L.C. (the "landlord").

The tenant acknowledged that she received a copy of the landlord's Application for Dispute Resolution and evidentiary package by Registered Mail on November 18, 2016. Pursuant to sections 88 and 89 the *Act*, the tenant is found to have been served with these documents.

Issue(s) to be Decided

Is the landlord entitled to retain the Security Deposit?

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

Can the landlord recover the filing fee from the tenant?

Background and Evidence

Testimony was provided by the landlord that this tenancy began on February 15, 2014 and ended on November 30, 2016. This end date was disputed by the tenant as she argued that she provided the landlord with written notice of her immediate intention to vacate the rental unit on November 1, 2016. The landlord acknowledged receiving

written notice on, or around November 3, 2016. Rent was \$1,200.00 per month and a security deposit of \$643.00 continues to be held by the landlord.

The tenant stated that she moved out on November 1, 2016. The landlord acknowledged that a condition inspection of the rental unit was performed by the landlord on November 15, 2017 without the tenant being in attendance. The landlord confirmed that the tenant was not informed of or made aware of this end of tenancy condition inspection. The tenant described having provided her forwarding address in writing to the landlord on November 1, 2016. The landlord confirmed receipt of this address on, or around November 3, 2016.

The landlord explained that she sought a Monetary Order for \$1,861.50 and to retain the tenant's security deposit of \$643.00 in reflection of damage to the apartment, unpaid rent for the month of November 2016, as well as cleaning services that were required following the end of the tenancy. Specifically, the landlord sought:

Item	Amount
Unpaid Rent for November 2016	\$1,200.00
Washing Blinds/Garbage Removal/Cleaning/Carpet Cleaning	472.50
Touch up painting and wall repair	189.00
Total =	\$1,861.50

The landlord stated that she sought this amount in her Monetary Order because of the losses incurred as a result of the tenant having left the apartment dirty, having to pay for professional cleaning of the blinds, carpet and walls, and having to remove items left in the rental unit following the conclusion of the tenancy. In addition, the landlord explained that there were some marks and gouges on the wall that needed to be repaired by a painting company.

The landlord provided to the hearing as part of her evidentiary package, photographic evidence, along with copies of the condition inspection reports completed at the start and end of the tenancy demonstrating the lack of cleanliness in the rental unit, along with receipts for all of the expenses incurred. A receipt of \$472.50 was submitted to the hearing as part of the landlord's evidentiary package. This receipt had no breakdown of individual costs associated with the required cleaning but noted that it was for washing blinds, garbage removal and disposal, cleaning the unit, and carpet cleaning. The tenant denied that these photos were a fair representation of the state of the apartment and explained the unit was older and dirty when she first moved in.

In addition to the above noted damages the landlord testified that she wanted to collect unpaid rent for the month of November 2016 due to a breach of the tenancy agreement. The Residential Tenancy Agreement entered into evidence by the landlord shows that it was signed between the parties on February 12, 2014 and demonstrates that the tenant agreed to its terms and conditions. Clause 13(a) notes that the tenant may end a monthly tenancy with the landlord by providing the landlord at least one month's written notice

The tenant explained that she understood that she would be permitted to leave some items in the apartment following her move out as she had directed the landlord to redistribute these items to the occupants of the building (it was a not for profit unit). The tenant denied that any repairs to the walls, carpets or blinds were necessary and noted that the walls could have easily been wiped clean and did not require repainting. The tenant testified that she spent 4 hours cleaning the unit and had left it in a satisfactory state. Furthermore, the tenant explained that she had lived in the rental unit for nearly 3 years and the carpets, blinds and paint were all old when she moved in.

The landlord testified that the apartment was last painted in February 2014, the carpet was approximately 7 to 8 years old and the blinds were 17 years old.

Analysis

The landlord has applied for both a Monetary Order and an Order allowing her to retain the security deposit.

Testimony was provided by both parties that the rental unit was vacated without proper notice being given to the landlord by the tenant during the first week of November 2016. Her action in doing so amounted to an abandonment of the unit. Section 35(5)(b) of the *Act* permits the landlord to perform a condition inspection report without the tenant if the tenant has abandoned the rental unit.

Undisputed evidence was presented by the landlord that goods were left in the rental unit. The condition inspection report completed at the end of the tenancy and provided to the hearing demonstrated that several parts of the unit were deemed to need cleaning or to have suffered damage.

Following her inspection on November 15, 2016, the landlord applied for dispute resolution for an Order allowing the landlord to retain the security deposit. Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for

dispute resolution for authorization to retain the deposit within 15 days after the *later* of either the end of the tenancy and/or upon receipt of the tenants' forwarding address in writing.

Evidence was produced at the hearing that the landlord applied for dispute resolution on November 18, 2016. The landlord acknowledged receiving the tenant's forwarding address on, or around November 3, 2016. She has therefore applied within 15 days of receiving a copy of the tenant's forwarding address.

The landlord has fulfilled the necessary criteria pursuant to section 38 of the *Act* and adequately performed a condition inspection of the rental unit as prescribed by section 35(5)(b) of the *Act* which found damage to the unit. This, along with the receipts provided to the hearing, demonstrates that the landlord has suffered financial loss as a result of damage to the unit. The landlord may therefore retain the tenant's security deposit. This deposit will be set against any Monetary Order awarded to the landlord.

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 her entitlement to her claim for a monetary award.

The landlord sought \$1,200.00 for unpaid rent for the month of November 2016, \$189.00 for paint and wall repairs, and \$472.50 for other cleaning that was required of the rental unit.

Section 45 of the *Act* notes that the tenant may end a tenancy not earlier than one month after the date the landlord receives the notice to end tenancy. While the parties may not agree on the exact date that the landlord received the tenant's notice to end tenancy, both parties agreed that the earliest it was received was November 1, 2016. Therefore, the tenant did not provide the landlord with one month's written notice to end the tenancy.. Further testimony was provided to the hearing that the rental unit was not ready for occupation until February 2017, following the tenant vacating the apartment due to repairs and paint work that needed to be performed.

Due to the unexpected manner in which the tenant vacated the rental unit, and pursuant to section 45 of the *Act*, I find that the landlord was left with a unit that she was unable to rent due to unexpected repair work that needed to be performed. Furthermore, the tenant vacated the rental unit without any explanation, and very little notice, thus leaving the landlord in the precarious position of having to prepare the suite for re-rental on an unknown timeline. Based on testimony and evidence submitted to the hearing, I am satisfied that the landlord has suffered some loss as a result of the tenant's actions. I find that landlord is entitled to rent for the month of November 2016.

Invoices provided to the hearing demonstrate that the landlord paid \$189.00 to a painting company to repair damage to the walls and for necessary touch up paint work. In addition, the landlord paid \$472.50 for cleaning of the carpets, blinds and rubbish removal. As mentioned previously, the tenant denied causing this damage and explained that the unit was older and many of the items listed for cleaning were already in a poor state. Furthermore, she explained that she had arranged with the landlord to redistribute items left in the apartment to other residents in the building.

Residential Tenancy Policy Guideline #40 is in place to deal with situations concerning questions of wear and tear. These guidelines provide a general guideline for determining the useful life of building elements. Of particular importance are the guidelines around interior painting, carpets and blinds. *Policy Guideline #40* notes that interior painting has a life span of 4 years, carpets have 10 years and blinds have 10 years.

Using *Policy Guideline #40* to determine exactly how much money the landlord should be compensated for her loss, I will examine the useful life of the objects in relation to the time at which they were replaced.

As per Residential Tenancy Policy Guideline 40, the useful life of interior paint is 4 years (or 48 months). If the unit was painted in February 2014 when the tenant moved in and the tenant moved out 34 months later, it had 14 months or 30% of its life expectancy left before the landlord would have had to repaint the rental unit. Therefore, I find the landlord is entitled to a monetary award of 30% of the cost of this \$189.00 repair work requested. I allow the landlord to recover \$56.70 for painting expenses.

As mentioned previously, a receipt of \$472.50 was submitted to the hearing as part of the landlord's evidentiary package containing no breakdown of individual costs associated with the required cleaning. I will focus on the aspects of this invoice concerning the carpets and the washing of blinds.

As per Residential Tenancy Policy Guideline 40, the useful life of carpets and blinds is 10 years. The landlord testified that the carpets were replaced approximately “7 or 8 years ago” while the blinds were 17 years old. The carpet was therefore approximately 7.5 years old when the tenant moved out in November 2016 and had 25% of its life expectancy left before the landlord would have had to replace it. The blinds were beyond their useful life. Therefore, I find the landlord is entitled to recover a portion of the expenses that she absorbed as a result of the cleaning services that were hired. Since the total invoice for all cleaning services was \$472.50 for a total of four services, it is reasonable to conclude that each task cost \$118.12 to perform.

During the hearing the tenant argued that any items left in the apartment were left with the permission of the landlord and that they were all useful items that could be redistributed to the other occupants of the building. While the rental unit may have been left tidy in the opinion of the tenant, it is the tenant’s responsibility as per section 37(2)(a) of the *Act* that the suite be left “reasonably clean, and undamaged, except for reasonable wear and tear.”.

The landlord did suffer a financial loss for cleaning services that were required to remove the debris left in the suite by the tenant, and to clean the carpet and the rental unit. I therefore award the landlord the following amounts:

- The entire amount due for debris removal and cleaning of the unit ($2 \times \$118.12 = \236.25)
- 25% of the amount due for carpet cleaning ($25\% \text{ of } \$118.12 = \29.53)
- No amount for the cleaning of the blinds.

I find that the landlord is entitled to recover \$265.78 of her cleaning expenses. The landlord will be granted a Monetary Order in reflection of the above noted losses.

As the landlord was partially successful in her application, she may recover the \$100.00 filing fee.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to recover a portion of this Monetary Order from the security deposit that was to be returned to the tenant. The landlord will be awarded a Monetary Order of \$979.48.

Conclusion

I issue a Monetary Order of \$979.48 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for November 2016	\$1,200.00
30% of Painting Bill	56.70
Cleaning Services	265.78
Recovery of Filing Fee	100.00
Less Return of Security Deposit	(-643.00)
Total =	\$979.48

The landlord is provided with a Monetary Order in the above terms and 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: May 24, 2017

Residential Tenancy Branch