



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACGREGOR REALTY & MANAGEMENT
name suppressed to protect privacy]

DECISION

Dispute Codes: MND MNSD FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit and pet damage 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

While the landlord's agent, DM ('landlord'), attended the hearing by way of conference call, the tenant did not. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

The landlord's agent testified that the tenants were served with the landlord's application for dispute resolution hearing package on April 18, 2017 by way of registered mail. A Canada Post tracking number was provided in evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on April 23, 2017, five days after its registered mailing.

Issue(s) to be Decided

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

Is the landlord entitled to retain all or a portion of the tenants' security deposit and pet damage deposit in satisfaction of their monetary claim?

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

Background and Evidence

This fixed-term tenancy began on December 9, 2014, with monthly rent set at \$3,800.00. The landlord still holds a \$1,900.00 security deposit and a \$1,900.00 pet damage deposit. The tenants moved out on February 28, 2017.

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

| Item | Amount |
|---|-------------------|
| Carpet Replacement | \$3,422.00 |
| New Garburator | 208.89 |
| Installation of Garburator | 60.60 |
| Carpentry for Damaged Baseboards | 230.00 |
| Recovery of Filing Fee for this Application | 100.00 |
| Security Deposit and Pet Damage Deposit | -2,800.00 |
| Total Monetary Order Requested | \$1,221.49 |

The landlord testified that the rental suite was brand new when the tenants had moved into the rental suite in 2014. The landlord stated that the tenants caused considerable damage to the suite which included pet urine stains to the brand new wool carpet, a damaged garburator, and water damaged baseboards. The landlord testified that a move in and move out inspection was completed for the rental unit, and a copy was provided in the landlord's evidence.

In support of their monetary claim the landlord provided invoices and receipts to support all the listed items above. The landlord testified that the suite was a large one, and they had tried their best to mitigate the cost by salvaging carpet to be re-used when possible. The landlord testified that as the carpet was a natural fibre, the urine stains could not be removed, and the carpet had to be replaced.

Analysis

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. I find that the landlord had complied with sections 23 and 35 of the *Act* by performing condition inspection reports for both the move-in and move-out. I also find that the landlord supported their claims with receipts and invoices. Accordingly, I find the landlord is entitled to compensation for these damages.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the carpet. As per this policy, the useful life of carpets is ten years. The rental unit was new at the time the tenant moved in and therefore at the end of the tenancy had approximately eight years of useful life left. Accordingly, I find that the landlord is entitled to \$2,737.60, which is the approximate prorated value of the remainder of the useful life of the carpet plus \$499.49 for the remainder of the monetary claim.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security and pet damage deposits plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

Conclusion

I issue a monetary Order in the amount of \$537.09 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 and pet damage deposits. The landlord is also authorized to recover \$100.00 for the filing fee.

| Item | Amount |
|--------------------|------------|
| Carpet Replacement | \$2,737.60 |
| New Garburator | 208.89 |

| | |
|---|-----------------|
| Installation of Garburator | 60.60 |
| Carpentry | 230.00 |
| Recovery of Filing Fee for this Application | 100.00 |
| Security Deposit and Pet Damage Deposit | -2,800.00 |
| Total Monetary Order | \$537.09 |

The landlord is provided with this Order in the above terms and the tenant(s) 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: June 7, 2017

Residential Tenancy Branch