



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANTAGE WEST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties attended and gave sworn testimony. The landlord said they served the Application for Dispute Resolution on the tenant personally and the tenant agreed he received it. There is a substantial amount of evidence and both parties agreed they received the documents from each other. I find the documents were legally served pursuant to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. They agreed the tenancy commenced January 10, 2016, a security and pet damage deposit were paid totalling \$2800 and monthly rent was \$2800. The tenant vacated on May 2, 2018 and had not paid rent for the 2 days in May. He contended he was late in moving in but agreed he had not paid rent until January 10, 2016 when he did move in. The house was new in 2006 and most of the items were original.

The landlord claims as follows:

1. \$180.00 Pro rated rent for over holding 2 days

2. \$1018.50 for landscaping including pruning bushes and mowing. The tenancy agreement made landscaping the responsibility of the tenant. The tenant said he did a spring clean up when he moved in and also pruned in late summer 2016. He does not think he should be responsible for these charges as photos provided in evidence taken in August 2017 show the garden blooming and the bushes healthy.
3. \$274.69 for treating the garage floor, walls and ceiling with a microbial agent to extract dog urine. The tenant agreed to this charge.
4. \$525 to clean the house (\$400) and clean carpet in 3 rooms (\$125). The tenant said he cleaned the home as well as he could but the landlord had painters in there before he moved out and they created dust and dirt.
5. \$5181.75 to seal and treat the garage floor after it was cleaned. The tenant said it was a bare concrete floor when he moved in so he should not be responsible for a special sealing and treating. The landlord said she did not know whether or not the floors were untreated concrete at move-in.
6. \$525 fee charged to do the arbitration by the management company.
7. \$5053.26 to replace carpets and under pads. They were 11 years old at move-out.
8. \$6623.46 estimate to sand and finish existing hardwood floor. They offer a discount of \$153.86 if payment is made in accordance with their terms. The floor was 11 years old and the tenant agreed their dog and their furniture scratched it a bit but said it was scratched before. Both tenants commented and provided photos to show the floor was significantly bleached in areas and submitted this also compromised its integrity so scratches showed up more easily. The tenant said the floor has not been treated and there is someone else living there; it may have been sold. The landlord agreed the floors had not been done.
9. \$184.80 to replace the bottom of the garage door that was soaked by dog urine.
10. \$13.43 for dishwasher cleaner. The tenant said the filter may have been plugged.

The tenant provided a statement, oral testimony and photographs to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

I find that there is over holding rent due of \$180.00. I find it is not relevant that the tenant moved in late as he did not pay rent for the days he did not live in the unit.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused some damage, that much of it was caused by his dog as it had to stay in the garage for long periods of time while he was at work. I find the damage cost will be adjusted according to Residential Policy Guideline 40 which is designed to account for reasonable wear and tear. I find the cost is supported by invoices and statements of witnesses.

I find the weight of the evidence is that the tenant did not maintain the landscaping in contravention of his tenancy agreement. I find the landlord incurred costs of \$1018.50 to have this landscaping done after he vacated. The landlord's credibility is supported by statements of the landscapers who found unpruned bushes, dog feces in the beds and the lawn needing mowing. I find the landlord entitled to recover \$1018.50 as claimed. Although the tenant provided photographs of the nice garden, I note they were taken in August 2017 after the landscapers had done their work so I find them of little evidentiary value as to how the tenant left the landscaping in May 2017.

I find the landlord entitled to recover \$274.69 as invoiced for the cleaning of the garage and \$184.80 to replace the bottom part of the door. The tenant agreed he was responsible for these charges as his dog caused some damage by urinating in the garage while he was at work. The tenant also agreed to \$13.43 for dishwasher cleaner.

In respect to the cleaning cost of \$525, I find section 37 of the Act requires a tenant to leave the unit clean at move-out. I find the move-out report supports the landlord's claim that the unit needed cleaning. Although the tenant claimed he cleaned the unit, he did agree that he was on his own and may have missed some items. The tenant provided evidence that the landlord's painter spilled the paint on the carpets. Considering the evidence, I find the landlord entitled to \$400 for the overall cleaning but not the \$125 amount for the carpet cleaning as the landlord replaced them and has listed this cost in her claim against the tenant.

I find the landlord not entitled to \$5181.75 for sealing and treating the garage floor. I find the weight of the evidence is that this was a bare, untreated floor at move-in and the tenant is only obligated to return it in the same condition. He has agreed to pay for the cleaning and replacing the bottom of the garage door.

I find the weight of the evidence is that the carpets were 11 years old at move-out. I find Policy Guideline 40 assigns a useful life for carpets of 10 years which is designed to account for reasonable wear and tear. These carpets were at the end of their useful life through reasonable wear and tear so I find the landlord not entitled to compensation of \$5053.26 to replace them.

In respect to the hardwood floors, I find they were sun bleached and scratched somewhat at move-in. However, I find the weight of the evidence is that the tenants' dog and furniture further scratched them. Policy Guideline 40 assigns a useful life of 20 years to hardwood floors. As they were 11 years old, I find they had 45% of their useful life remaining. The estimated cost was \$6623.46 less \$153.86 for prompt payment for a total of \$6469.60. I find the landlord entitled to recover \$2911.32 which is 45% of their replacement cost.

In respect to the \$525 claim for the agent fee for arbitration, I find recovery of fees for the arbitration process is limited to \$100 pursuant to section 72 of the Act for the cost of the filing fee. As explained in the hearing, the process is designed so litigants may do it themselves without incurring cost of lawyers or agents.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security and pet damage deposits to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

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|---|----------------|
| Over holding rent | 180.00 |
| Landscaping cost | 1018.50 |
| Special Cleaning of garage | 274.69 |
| Cleaning of home allowance | 400.00 |
| Replace hardwood flooring allowance | 2911.32 |
| Replace bottom of garage door | 184.80 |
| Dishwasher cleaner | 13.43 |
| Filing fee | 100.00 |
| Less security and pet damage deposits | -2800.00 |
| Total Monetary Order to Landlord | 2282.74 |

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: January 31, 2018

Residential Tenancy Branch