



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

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

- a Monetary Order for damage, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authority to retain the tenant's security deposit, pursuant to section 38; and
- repayment of the filing fee, pursuant to section 72.

The tenant, the building manager and the property manager (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that she served the tenant the notice of dispute resolution package by registered mail on December 22, 2017. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the dispute resolution package. I find that the tenant was deemed served with this package on December 27, 2017, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to repayment of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This periodic tenancy began on July 1, 2016 and ended on November 29, 2017. Monthly rent in the amount of \$1,451.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed that on November 28, 2017 the tenant provided written notice that he was ending the tenancy effective November 29, 2017. The tenant testified that he also provided verbal notice to the building manager on November 10, 2017; however, the building manager denied receiving said verbal notice.

Both parties agreed to the following facts. Both parties completed a joint move in inspection and inspection report on July 1, 2016. Both parties completed a joint move out inspection on November 29, 2017 but the tenant did not sign the move out inspection report.

The building manager testified that they completed the move out inspection together and that he filled out the move out inspection report (the "report") as they moved through the property. When the inspection was complete, the building manager testified that he had to go to his office to tally up the total and when he came back, roughly 2-3 minutes later, the tenant left without signing the report. The tenant testified that after the building manager left to tally up the report, he waited 15 minutes but had to catch a ferry so he left without signing the report.

The landlord testified that the rental unit and the drapes were left very dirty and required extensive cleaning; the landlord submitted into evidence photographs showing same. The building manager testified that he cleaned the unit for approximately 20 hours and also cleaned the drapes. He testified that he was paid \$360.00 to clean the suite and the drapes. The landlord entered into evidence a form titled "Manager's Labour" showing labour amounting to \$360.00 for cleaning the unit.

The landlord testified that the carpet was too dirty and worn to be cleaned and needed to be replaced. The landlord submitted into evidence photographs showing a very dirty carpet. The landlord testified that the carpet in question was installed sometime in 2006. The landlord submitted into evidence a carpet invoice amounting to \$2,672.25 for the replacement of all of the carpet in the unit.

The tenant testified that the carpet was stained and dirty when he moved in and that he should not have to pay for new carpet. The move in condition inspection report entered into evidence by the landlord shows that the carpet had stains in the living room, dining room and two bedrooms when the tenant moved in.

The landlord testified that the walls were dirty and stained and could not be made clean by washing them. The landlord submitted photographic evidence depicting very dirty walls. The building manager testified that he was paid \$350.00 for painting the unit. The "Manager's Labour" form showed labour amounting to \$350.00 for painting the unit. The tenant testified that he thought the walls needed cleaning, but not painting. Both parties agreed that the unit was painted at the end of June 2016, just before the tenant moved in.

Analysis

Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the date before the day in the month that rent is payable under the tenancy agreement.

This issue is expanded upon in Policy Guideline #5 which explains that, where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, **the landlord is not required to rent the rental unit or site for the earlier date.** The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

In this case, the tenant gave written notice on November 28, 2018 to end the tenancy on November 29, 2018. This is less than the one month's notice required under section 45 of the *Act*. Therefore, I find that the tenant is liable for December 2018's rent in the amount of \$1,451.00.

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord, and the testimony of the landlord and the building manager, I find that the rental unit and drapes required significant cleaning. The landlord submitted into evidence a manager's labour form showing labour for cleaning totaling \$360.00. I find that the tenant is responsible for these cleaning fees.

The landlord testified that the carpets in this unit were installed in 2006, approximately 12 years ago. The tenant testified that the carpets were worn and stained when he moved in and this is evidenced by the "stained" notations in the move in condition inspection report.

Policy Guideline #40 states that the useful life for carpets is 10 years. I find that the carpets were stained when the tenant moved in and the carpet in question was past its useful life when the tenant moved out. I dismiss the landlord's claim for carpet cleaning and or replacement.

The landlord and the building manager testified that the walls were stained and dirty and required re-painting. Based on the testimony of the landlord and the building manager and the photographic evidence, I find that re-painting was reasonable. The tenant testified that the unit was painted at the end of June 2016, just before he moved in.

Policy Guideline #40 states that the useful life for interior painting is four years (48 months). Therefore, at the time the tenant moved out, there was approximately 31 months of useful life that should have been left for the interior paint of this unit. I find that since the unit required repainting after only 17 months, the tenant is required to pay according to the following calculations:

$\$350.00$ (cost of painting) / 48 months (useful life of paint) = $\$7.29$ (monthly cost)

$\$7.29$ (monthly cost) * 31 months (expected useful life of paint after tenant moved out) = $\$226.04$

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of $\$700.00$ in part satisfaction of her monetary claim for unpaid rent against the tenant.

Since the landlord was successful in her application, I find that the landlord is entitled to the recover the filing fee in the amount of $\$100.00$ from the tenant.

Conclusion

I issue a monetary Order to the landlord under the following terms:

Item	Amount
December 2017 rent	\$1,451.00
Painting	\$226.04
Cleaning of unit and drapes	\$360.00
Filing Fee	\$100.00
Less security deposit	- \$700.00
TOTAL	\$1,437.04

The landlord is provided with this 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: June 22, 2018

Residential Tenancy Branch