



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

On April 26, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") requesting a monetary order for damages to the unit, unpaid rent, permission to retain the security deposit, and the return of their filing fee. The matter was set for a conference call.

The Landlord attended the conference call hearing and was affirmed to be truthful in her testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution and Notice of Hearing were served on the Tenant by Canada Post Registered mail. A Canada post tracking number for the mail sent on April 27, 2018 was provided as evidence of service. I find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on August 8, 2017, as a six-month fixed term tenancy. Rent in the amount of \$775.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$387.50 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that the Tenant was served with a 10-day Notice to End Tenancy for Unpaid Rent or Utilities on April 3, 2018. The Landlord confirmed that the Tenant moved out of the rental unit on April 14, 2018. The Landlord testified that the move-out inspection was conducted on April 14, 2018, and that the Tenant attended but did not sign the inspection report. The Landlord entered a copy of the move-out inspection report into documentary evidence.

The Landlord is seeking a monetary order for the unpaid rent for April 2018, a late payment fee of \$25.00, and to recover the costs associated with getting the rental unit repaired.

The Landlord testified that the Tenant had left the rental unit in a dirty and damaged state. The Landlord provided pictures of the rental unit taken on April 27, 2018, two timesheets detailing the hours worked by their staff, and eight pages of receipts into documentary evidence.

The Landlord is claiming the following damages:

- \$161.97 for carpet cleaning;
- \$125.17 for new Window Coverings;
- \$40.00 for labour to install the new window coverings;
- \$125.95 in hardware supplies;
- \$240.00 in labour for repairs;
- \$40.69 for cleaning supplies;
- \$240.00 in labour for cleaning;
- \$303.56 for painting supplies;
- \$240.00 in labour costs for painting

- \$200 in labour to install taps, upgrades,
- 775.00 for April's rent, and
- \$25.00 Late fee

Analysis

Based on the above, the Landlord's testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a 10-day Notice to End Tenancy for Non-payment of Rent (the Notice) a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

I find that the Tenant did not pay the rent or dispute the Notice, and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice. I find that the Tenant vacated the rental unit on April 14, 2018, in accordance to the Notice.

Therefore, I find that the Landlord has established an entitlement to a monetary award for the unpaid rent for April 2018 and the late fee of \$25.00 for missed payment, in accordance with the tenancy agreement.

As for the Landlord's claim to recover the costs associated with cleaning and repairing the rental unit, I must refer to the Residential Tenancy Policy Guideline #1, Landlord & Tenant – Responsibility for Residential Premises, which states a Tenant must leave a rental unit reasonably clean, as follows:

“The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).”

I also refer to the Residential Tenancy Rules of Procedure, section 6.6, which place the onus of proof on the applicant, to show sufficient evidence that they are entitled to their claim.

I have carefully reviewed the inspection report, the pictures, and all documentary evidence provided by the Landlord. I accept that both the Tenant and the Landlord's Agent attended the move-out inspection of the rental unit on April 14, 2018. I find the move-in/move-out inspection report (the "inspection report") to be the official condition of the rental unit at the beginning and the end of this tenancy.

The inspection report shows that the rental unit had not been cleaned at the end of tenancy as required by section 37 (2) of the *Act*. Therefore, I am awarding the Landlord the full amount requested, to recover their costs in supplies and labour to clean the rental unit, including carpet cleaning.

In regard to the Landlord's claim for painting the rental unit, the Residential Tenancy Policy Guideline #1, Landlord & Tenant – Responsibility for Residential Premises states:

"PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible."

In order to find for the Landlord on this matter, the Landlord must provide sufficient evidence to show that the Tenant had damaged the walls of the rental unit to the extent that the entire space needs to be repainted. I note that the inspection report listed the condition of the walls and the ceilings of the rental unit as being in "Fair" condition on both the move-in and the move-out sections of that report.

The inspection report indicates no change to the condition of the walls and ceilings from the beginning to the end of the tenancy. In the absence of any other evidence, I find that the Landlord has not provided sufficient evidence to support their claim that the Tenant is responsible for the cost associated with repairing and repainting the walls and ceilings of the rental unit.

Regarding the Landlord's claim for the replacement costs of window coverings, the Residential Tenancy Policy Guideline #1, Landlord & Tenant – Responsibility for Residential Premises states:

“INTERNAL WINDOW COVERINGS

4. The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc.”

The inspection report shows that the window coverings, at move-in, were in “Good” condition. The inspection report at the of tenancy list the window coverings as being in “Fair” condition, but broken. I noted that there was a third option on the inspection report to code an item as “Poor”; however, the Landlord’s Agent who conducted the inspection did not elect to use the code of poor in their description of the condition of the window coverings during the move-out inspection.

When determining the award of damages, I need to take into account the age and the condition of the of the item being replaced. The Residential Tenancy Policy Guideline #40, Useful Life of Building Elements states:

“Damage

When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.”

In this case, the Landlord is asking for the full costs associated to buying and installing new window coverings. In the absence of documentary evidence showing the age of the window coverings, I am not able to award the full replacement value to the Landlord. I find that the window coverings had been broken during the tenancy; however, they were not so badly broken that they were deemed to be in poor condition during the end of tenancy inspection. On the balance of probabilities, I find that the Landlord is entitled to the repair costs of the broken window coverings, not the full replacement value. As the Landlord elected to replace the window coverings and not repair them, I will award the Landlord a depreciated value of the cost of new window coverings. Therefore, I am granting the Landlord 50% of their requested costs for losses due to damaged window coverings.

Additionally, the Landlord has also requested to be compensated for costs associated with general labour and repairs, as well as some “upgrades” to the rental unit. Section 8

of the *Act* states that the landlord must provide and maintain the residential property in a reasonable state of decoration and repair, and that a tenant is only responsible for the costs associated with damage the tenant or a guest of the tenant caused to the rental unit, and that the tenant is not responsible for the costs associated with reasonable wear and tear or upgrades to the rental property.

I find that the request for the cost associated with general repairs and upgrades listed by the Landlord fall under regular maintenance due to normal wear and tear, and are not the responsibility of the Tenant.

Therefore, I find that the Landlord has established an entitlement to a monetary award for the unpaid rent for April 2018, the late payment fee for April's rent, the full costs of cleaning the rental unit and for the depreciated value of the cost of new window coverings. The Landlord is also authorized to retain the Tenant's security deposit as partial satisfaction of this award.

Pursuant to section 46 and 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$937.75. The Order is comprised of \$750.00 for April's rent, a \$25.00 late fee, \$442.66 in cleaning costs, and \$82.59 for a depreciated value for the replacement costs of the window coverings, less the \$387.50 that the Landlord holds as a security deposit.

As the Landlord has been successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

<u>Awarded Item's</u>	<u>Hrs</u>	<u>Rate</u>	<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Rent - April 2018			\$775.00	100%	\$775.00
Late payment fee- April			\$25.00	100%	\$25.00
Carpet Cleaning			\$161.97	100%	\$161.97
Cleaning Supplies			\$40.69	100%	\$40.69
Labour - Cleaning	12	\$20	\$240.00	100%	\$240.00
Window Coverings			\$125.17	50%	\$62.59
Install Window Coverings	2	\$20	\$40.00	50%	\$20.00
					\$1,325.25
Security deposit held					-\$387.50
					\$937.75
Filing fee					\$100.00
Due					\$1,037.75

Conclusion

I find for the Landlord under sections 46, 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$1,037.75** for loss of rental income, cleaning costs, window coverings, and the recovery of the filing fee for this application. 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 15, 2018

Residential Tenancy Branch