



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, MNDL

Introduction

This hearing dealt with the landlord's application seeking an Order of Possession and a Monetary Order pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants did not attend this hearing. I confirmed the correct call-in numbers and participant codes had been provided in the Notice of Hearing. Following the hearing, I also confirmed from the online teleconference system the landlord and I were the only ones who had called in to the teleconference.

The landlord testified the tenants were individually served with the Notice of Hearing documents and this application by registered mail on April 24, 2018 pursuant to Section 59(3) of the *Act*. The landlord provided a copy of the Canada Post Customer Receipts containing the tracking numbers. In accordance with section 89 of the *Act*, I find that the tenants were duly served on April 29, 2018.

On May 8, 2018 the landlord submitted an Amendment to his application with an included Worksheet (*Amendment of Application*). In this document, the landlord itemized his monetary claims for damages in the total amount of \$3,076.66.

The landlord testified the tenants were individually served on May 8, 2018 with the Amendment of Application pursuant to Section 59(3) of the *Act* at the forwarding address provided by the tenants when they vacated the premises on April 24, 2018. The landlord submitted a copy of the Canada Post Customer Receipts containing the tracking numbers. In accordance with section 89 of the *Act*, I find that the tenants were duly served on May 13, 2018.

Pursuant to Rule 4.6 of the Rules of Procedure, a copy of the *Amendment of Application* and supporting evidence should be served on the tenants as soon as possible and must be received by them not less than 14 days before the hearing. Service in this case was made on May 13, 2018, only 10 days before the hearing.

However, further to Section 71(2) of the *Act*, I find the tenants were sufficiently served on May 13, 2018 for the following reasons: the landlord tried to effect service 14 days before the hearing (on May 8, 2018) and the tenants failed to appear or request an adjournment.

The landlord testified he no longer needed an Order of Possession as the tenants had moved out of the premises.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a Monetary Order from the tenants pursuant to Sections 37, 38, and 72 of the *Act* for the following:

- unpaid rent;
- cleaning and damages; and
- recovery of the filing fee.

Background and Evidence

A tenancy agreement was signed by the parties on August 30, 2017 for a month-to-month tenancy beginning September 1, 2017 for rent of \$1,580.00 payable on the first day of the month. The tenants paid a security deposit of \$790.00 which is still held by the landlord.

The tenants failed to pay rent due on April 1, 2018 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (*10 Day Notice*) dated and served upon the tenants on April 14, 2018. The landlord testified the tenants paid \$50.00 towards rent on April 20, 2018.

The landlord submitted a Condition Inspection Report based on an inspection which had been conducted at the start of the tenancy confirming that the unit was clean, including the bathroom vanity, the carpets and the walls. The tenants refused to attend for an inspection report on moving out.

The landlord testified as to the condition of the premises at the beginning of the tenancy as follows:

- the unit was substantially carpeted throughout;
 - 25% of the carpet was new, and
 - 75% was seven years old;
- the bathroom vanity was new; and
- the unit had been freshly painted.

The landlord described the damage to the unit when the tenants vacated the premises:

- the carpets were stained (grease, food and indelible dye), could not be cleaned, and had to be replaced;
- the bathroom vanity was damaged and permanently stained rendering it irreparable and requiring replacement;
- the walls were marked permanently throughout and the entire unit had to be repainted;
- the tenants left possessions and garbage requiring the hiring of a person to assist the landlord in disposal, thereby incurring labour and disposal expenses; and
- the tenants stored perishable, rotting food and garbage throughout the premises in an unsafe and unhealthy manner which attracted rodents, necessitating the landlord to retain the services of a pest control company, a certified licensed professional.

The landlord provided substantial photographic evidence showing the stains and damage to the carpet including blue dye and food grease, the marks on the walls throughout the unit made primarily by permanent liquid markers, the damage to the vanity (including dye stains as well as multiple scratches and marks), the boxes and abandoned possessions throughout the unit, and the rotting food in the kitchen, storage areas and furnace room.

The landlord testified the apartment would be uninhabitable until the repair work was completed at the end of May 2018 and so seeks compensation for lost revenue in an amount equivalent to one month's rent.

The landlord submitted invoices in support of his claim for reimbursement for the following expenses:

	<i>Item</i>	<i>Supplier</i>	<i>Details</i>	<i>Amount</i>
1.	Carpet	End of the Roll	Carpet replacement	\$1,397.76
2.	Paint	Pacific Paint and Wallpaper	Paint for unit	\$440.54
3.	Garbage	"A.M." [name of worker]	Labourer	\$279.50
		Elice Recycle	Dump fees	\$110.88
4.	Vanity	Home Depot	Vanity replacement	\$480.48
5.	Rodents	Canada Pest Patrol Inc	Pest control	\$367.50
			Total expenses	\$3,076.66

The landlord stated the tenants agreed upon vacating that the security deposit could be applied to unpaid rent.

Analysis

Claim for Damages

To be successful in a claim for loss or damages, the application must provide sufficient evident to establish the following:

1. A loss or damage exists;
2. The loss or damage results from a violation of the *Act*, regulation, or tenancy agreement;
3. The value of the loss or damage is ascertained;
4. Steps have been taken to mitigate the loss or damage.

In the absence of any contrary evidence, I accept the landlord's testimony the tenants caused the damage he described. I find he has taken reasonable steps to mitigate the damage and has incurred the expenses claimed. The landlord testified he was not claiming compensation for his own work in cleaning, painting, replacing the vanity, and disposing of the abandoned items.

Residential Tenancy Policy Guideline #37 contains a table setting out the useful life of products used in homes. The guideline states that the useful life of carpet is ten years. Accordingly, at the end of this tenancy, 25% of the carpet had a full life expectancy (10 years) and 75% (being seven years old) had a 3-year life expectancy.

Applying this Guideline to the current situation, I find the landlord is entitled to the following:

New carpet	25% of \$1,397.76 (replacement cost)	\$349.44
7-year old carpet	3/10 (33%) of (\$1,397.76-394.44)	\$331.10
	Total Allowed Carpet Expenses	\$680.54

I accept the landlord's uncontradicted claim for reimbursement for damage in addition to replacement of the carpet, all of which I find reasonable expenses in the circumstances, summarized as follows:

Carpet	\$680.54
Paint	\$440.54
Labourer	\$279.50
Dump fees	\$110.88
Vanity replacement	\$480.48
Pest control	\$367.50
Total	\$2359.44

Landlord's Claim for Rent and Lost Revenue

I accept the landlord's undisputed testimony the tenants paid rent in the amount of \$50.00 for the month of April 2018 leaving a balance owing of \$1,530.00.

From the undisputed submissions of the landlord, I also find the unit could not be rented until the end of May 2018 without the repairs described by the landlord for damage caused by the tenants.

I therefore grant the landlord's claim for unpaid rent and lost revenue as follows:

Rent unpaid for the month of April 2018	\$1,580.00
Rent unpaid for the month of May 2018	\$1,580.00
Less \$50.00 paid by tenants April 20, 2018	-\$50.00
Total allowed rent claim	\$1,530.00

<u>Rent unpaid for the month of April 2018</u>	<u>\$1,580.00</u>
<u>Rent unpaid for the month of May 2018</u>	<u>\$1,580.00</u>
<u>Less \$50.00 paid by tenants April 20, 2018</u>	<u>-\$50.00</u>
<u>Total allowed rent claim</u>	<u>\$3,110.00</u>

Filing Fee

As the landlord has been successful in this application, I provide an order for reimbursement of the filing fee of \$100.00.

Summary of Allowed Claim

I summarize the allowed claims of the landlord as follows:

Total Allowed Monetary Claim for damage	\$2359.44
Total Allowed Rent Claim	\$1,530.00
Filing Fee	\$100.00
Less Security Deposit	-\$790.00
Total Monetary Order	\$3,199.44

<u>Total Allowed Monetary Claim for damage</u>	<u>\$2,359.44</u>
<u>Total Allowed Rent Claim</u>	<u>\$3,110.00</u>
<u>Filing Fee</u>	<u>\$100.00</u>
<u>Less Security Deposit</u>	<u>-\$790.00</u>
<u>Total Monetary Order</u>	<u>\$4,779.44</u>

Conclusion

The landlord is entitled to a Monetary Order in the amount of ~~\$3,199.44~~ **\$4,779.44**. This Order must be served on the tenants. If the tenants fail to comply with this Order the landlord may file the Order in the Provincial Court (Small Claims) and be 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 13, 2018

Corrected: July 11, 2018

Residential Tenancy Branch