



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDL, MNRL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"), made on May 31, 2018. The Landlord applied for a monetary order for damages to the rental unit, for unpaid rent, and to recover the filing fee paid for the application. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their 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 damages?
- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The Parties testified that the tenancy began on November 1, 2017, as a month to month tenancy, and that rent in the amount of \$850.00, was to be paid by the first day of each month. The Parties also confirmed that the Landlord is holding a \$425.00 security deposit that was paid by the Tenant at the beginning of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that the Tenant gave notice, on March 28, 2018, to end the tenancy as of April 30, 2018. The Landlord provided a copy of the Tenant notice into documentary evidence. Both parties testified that Tenant did not vacate the rental unit until May 7, 2018. The Landlord testified that both the move-in and move-out inspections had been conducted and the Landlord provided a copy of the inspection report into documentary evidence.

The Landlord testified that he is claiming losses under the *Act* in the amount of \$3,075.75; comprised of \$237.50 in cleaning, \$2,112.24 to remove and install new carpets, \$631.01 for painting and paint supplies and \$425.00 in rent for half the month of May 2018.

The Landlord testified that he is seeking the full replacement cost for the carpets in the rental unit, stating that the carpets needed to be replaced due to cigarette burn holes caused by the Tenant's son. The Landlord testified that he did not know how old the carpets in the unit were. However, he stated that they were at least eight years old but were in good shape. The Landlord provided three pictures into documentary evidence of the carpet in the rental unit at the end of the tenancy.

The Landlord also testified that after the Tenant moved out, he had to have the walls washed in the rental unit due to the smell of cigarette smoke. The Landlord stated that he is requesting cleaning cost, for washing the walls of the rental unit and for cleaning the fridge and the stove, that had been left dirty at the end of the tenancy.

Additionally, the Landlord is requesting half a month's rent from the Tenant as the tenant did not move out of the rental unit until May 7, 2018, and he was unable to find a new Tenant to take over the rental unit until June 1, 2018.

The Tenant testified that she had cleaned the rental unit before she moved out, including washing the walls and cleaning the fridge and stove. The Tenant testified that her son had smoked in the rental unit and there were a few cigarette burns in the carpet, which had been caused by him. Tenant testified that the carpet was old with stains on it when she had moved in, and she does not feel that she should be responsible for the cost to buy new carpets due to their age and poor condition when she moved in.

The Tenant confirmed that she did overhold the rental unit by seven days, but that she did not feel that she should be responsible for a half a month's rent when she wasn't there for that full-time.

Analysis

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

I accept the testimony of both parties that the Tenant's son damaged the carpet in the rental unit. I find that the Tenant breached section 32(3) of the *Act* when she permitted someone on the property that caused damage to the rental unit.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenant's breach of section 32 of the *Act* resulted in a loss to the Landlord and that the Landlord has provided sufficient evidence to prove that there has been damage caused to the rental unit as a result of the Tenant's breach.

However, I find that the Landlord failed to provide documentary evidence to prove the amount of or the value of the damage caused to the rental unit by the Tenant's breach. Therefore, I dismiss the Landlord's claim for the costs associated with the carpet replacement.

Regarding the Landlord's claim for cleaning cost and painting of the rental unit. I find that the parties to this dispute offered conflicting verbal testimony regarding the rental units needed for additional clean at the end of this tenancy. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I accept the move-out inspection report, provided into documentary evidence by the Landlord, as representing the official condition of the rental unit at the beginning and end of this tenancy. I also note that the move-out inspection is the only piece of evidence submitted by either party, representing the official condition of the rental unit at the end of this tenancy. I have carefully reviewed the inspection report, and I find that there is no mention of the need for additional cleaning or painting in that document. Therefore, I find that the Landlord has failed to provide evidence that shows the cleaning and painting he is claiming for had been required; consequently, I dismiss the Landlord's claim for cleaning and painting costs.

In regards to the Landlord's claim for half a month's rent for May 2018. I find that this tenancy was a month to month tenancy and that the Tenant gave proper notice to end her tenancy in accordance with section 45 of the *Act*. Based on the Tenant's notice, I find that this tenancy legally ended on April 30, 2018. However, I also find that the Tenant did not move out in accordance with her notice, and remained in possession of the rental unit until May 7, 2018. Section 57 of the *Act* states:

“What happens if a tenant does not leave when tenancy ended

57 (1) In this section:

"new tenant" means a tenant who has entered into a tenancy agreement in respect of a rental unit but who is prevented from occupying the rental unit by an overholding tenant;

"overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

(4) If a landlord is entitled to claim compensation from an overholding tenant under subsection (3) and a new tenant brings proceedings against the landlord to enforce his or her right to possess or occupy the rental unit that is occupied by the overholding tenant, the landlord may apply to add the overholding tenant as a party to the proceedings."

I find that the Tenant overheld the rental unit by seven days in May 2018 when she did not move out in accordance with her notice. However, I also find that there no evidence before me to show that a "new tenant" had been prevented from occupying the rental unit by the Tenant overholding in this case. Therefore, pursuant to section 57(3) of the *Act*, I find that the Tenant is responsible to for the rent for the period that the Tenant overheld the rental unit.

I find that the Landlord has established an entitlement to a monetary award for seven days of rent for May 2018, for the period in which the Tenant overheld the rental unit. I grant the Landlord and award of \$191.94, comprised of seven days rent at the rate of \$27.42 per day.

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

I grant the Landlord an award of \$291.74, consisting of \$191.94 in rent and the recovery of the \$100.00 filing fee for this hearing. I order the Landlord to return the balance of the security he holds, \$133.26, to the Tenant within 15 days of receiving this decision.

I grant leave to the Tenant to apply for the return of her security deposit if the Landlord does not comply as ordered.

Conclusion

I find for the Landlord under sections 67 and 72 of the Act, and authorize the Landlord to retain \$291.74 from the Tenant's security. I order the Landlord to return of the remainder of the Tenant's deposits in the amount of **\$133.26** to the Tenant within 15 days of receiving this decision.

This decision is made on the authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 20, 2018

Residential Tenancy Branch