



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing was reconvened following the original hearing that had been scheduled for July 24, 2018 in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the original or reconvened hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on March 28, 2018 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on April 2, 2018.

In the Interim Decision dated July 25, 2018 the original hearing was adjourned. The Landlord was ordered to serve the Interim Decision and notice of reconvened hearing to the Tenant within 3 day receipt of the Interim Decision. I accept the Landlord’s evidence that the Tenant was served with the Interim Decision and notice of reconvened hearing by registered mail on July 26, 2018. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts owed?

Background and Evidence

The tenancy started on October 1, 2016. Rent of \$990.00 was payable on the first day of each month. On September 29, 2016, the Parties mutually conducted a move-in condition inspection with a report copied to the Tenant. In a previous Decision dated February 15, 2017 (the "Previous Decision") the Landlord was granted an order of possession effective February 28, 2018 and a monetary order for rent to and including February 2018 of \$805.00. The Landlord has no evidence that any offers were made for a move-out inspection that was conducted by the Landlord alone with an inspection report completed and included as evidence.

The Landlord states that the Tenants did not move out of the unit on February 28, 2017 and that the Landlord obtained a Writ of Possession on March 10, 2017. The Landlord paid a retainer of \$1,484.00 to a bailiff on March 16, 2017 to remove the Tenants. The Tenants moved out of the unit on March 20, 2018 without having the bailiff involved for the removal. The Landlord claims the non-refundable bailiff costs of \$621.60 and provides the receipt for this claim.

The Landlord claims overholding rent for the period March 1 to 20, 2017 and lost rental income due to the unit being left unclean for the period March 21 to 30, 2017 in the amount of \$990.00. The Landlord's application sets out a total monetary claim of \$1,325.00 however the Landlord has no evidence to substantiate the \$335.00 claimed additionally to the rent.

The Landlord states that the Tenant left the unit unclean. The Landlord provides a copy of the move-out inspection noting soiled carpets and other unclean areas with copies of receipts for the following claims:

- \$485.01 as the costs to remove garbage left at the unit;

- \$152.25 as the costs to clean the carpet; and
- \$170.38 as the costs to clean the unit.

The Landlord claims \$448.35 as the costs to paint the walls of the unit. The Landlord notes that the walls are noted to be either stained or scratched. The Landlord has no evidence that any attempts were made to remove the stains by washing or whether the scratches could have been simply patched. The Landlord has no evidence of the date the unit walls were last painted.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Policy Guideline #40 provides that the life of interior paint is 4 years. Based on the undisputed evidence of the Landlord I find that the Tenant failed to leave the unit and carpet reasonably clean and left garbage behind at the end of the tenancy. For this reason and given the receipts for the costs claimed I find that the Landlord has substantiated a monetary amount of **\$807.64** (\$485.01 + 152.25 + 170.38).

As the Landlord provided no evidence of the age of the interior paint, that the stains on the walls could not be removed by washing or that the scratches could not be patched and given the short term of the tenancy I find that the Landlord has not substantiated that it took any reasonable steps to mitigate the costs claimed for painting the walls and I dismiss the paint cost claim.

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. Based on the undisputed evidence that the Tenant did not pay any rent for March 2017, occupied the unit until March 20, 2017, and left the unit unclean I find that the Landlord has reasonably substantiated an entitlement to **\$990.00** for March 2018. Given that the Landlord provided no basis for the additional monetary claimed amount of \$335.00 I dismiss this claimed amount. Based on the undisputed evidence of the effective date of the order of possession and the undisputed evidence that the Tenant did not move out of the unit until March 20, 2018, I find that the Landlord reasonably and expectedly incurred bailiff costs to remove the Tenants. Given the receipt for those costs I find that the Landlord is entitled to the claimed amount of **\$621.60**.

As the Landlord has been successful with its application I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,519.24**.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$2,519.24**. If necessary, this order may be filed in the Small Claims 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: September 19, 2018

Residential Tenancy Branch