



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHLAND ASSET MANAGEMENT CO. LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On July 10, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for carpet cleaning pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

L.A. attended the hearing on behalf of the Landlord and W.R. attended the hearing on behalf of the Tenants. All in attendance provided a solemn affirmation.

L.A. advised that he served each Tenant a Notice of Hearing package and evidence by registered mail on July 12, 2018 and W.R. confirmed receipt of this. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing package and evidence. W.R. advised that while she had evidence, she did not submit any evidence as she was not physically able to.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for liquidated damages?
- Is the Landlord entitled to a Monetary Order for carpet cleaning?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

Both parties agreed that the tenancy started on February 23, 2018 as a fixed term tenancy for a period of one year and that the Tenants vacated the rental unit on June 30, 2018. Rent was established at \$875.00 per month due on the first of each month. A security deposit of \$437.50 was also paid. The tenancy agreement stipulated that there would be a **\$250.00** liquidated damages charge for breaking the fixed term tenancy early.

L.A. advised that a move-in and a move-out inspection report was conducted by both parties and that the Tenants signed the move-out inspection on June 30, 2018; however, they disagreed with the condition of the premises. L.A. stated that he was seeking a **\$100.00** carpet cleaning fee as per clause 13 of the tenancy agreement. When he was asked if there was a receipt to confirm the cost of carpet cleaning, he stated that he needed "to come clean" as the carpets were actually replaced with laminate flooring after the Tenants vacated the rental unit. He submitted that, due to a corporate decision, the rental unit was fully renovated as well. The Tenants provided a forwarding address in writing on the bottom of the move-out inspection report.

L.A. stated that during the tenancy, the Tenants contacted him three times advising him of an ant infestation. He stated that he investigated each time and was accompanied by his wife; however, there were no ants found. While there was no evidence of the ant problem, he offered to have a pesticide company come in and fumigate the rental unit anyway, but the Tenants declined this offer.

W.R. stated that they moved in and were there for approximately four days when they started to notice ants "everywhere". She advised that L.A. investigated the issue and confirmed that there were ants in another suite. She stated that she had pictures of the ant infestation; however, she was not physically able to submit this evidence. She submitted that the reason they refused the offer of fumigation was because they did not want to live with "poison". She also stated that the Landlord would not offer to fumigate if there was not an ant problem. She submitted that L.A.'s wife was observed spraying Roundup around the outdoor patio. W.R. advised that she sprayed the ants in her rental unit with vinegar and water.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the *Act*.

As the undisputed evidence is that the forwarding address in writing was provided on June 30, 2018 when the Tenants vacated the rental unit, and as L.A. made his Application within the 15-day frame, I am satisfied that the Landlord complied with the *Act* with respect to dealing with the deposit.

When establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

The first issue I will address is with respect to the Landlord's claim for the liquidated damages. There is no dispute that the parties entered into a fixed term tenancy agreement from February 23, 2018 for a period of one year, yet the tenancy effectively ended when the Tenants vacated the rental unit on June 30, 2018.

I find it important to note that Section 45 of the *Act* states that "If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice." However, while L.A. agrees that he was aware of the Tenants' complaints, he investigated and determined that there was no ant infestation. While the Tenants claim that there was an ant infestation that eventually forced them to move, they have not provided any proof of such, even though W.R. advised that she had evidence to corroborate this. As such, I am not persuaded that a material term of the tenancy was breached by the Landlord and that the tenancy was permitted to be ended pursuant to Section 45 of the *Act*. Therefore, I am satisfied that L.A. has established a monetary award for liquidated damages in the amount of **\$250.00**.

With respect to L.A.'s request for compensation for the cost of carpet cleaning, as he admitted that the carpets were not cleaned, but were replaced entirely, I do not find that he has established a valid claim. As such, I dismiss this claim in its entirety.

As L.A. was partially successful in his claims, I find that the Landlord is entitled to recover half of the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of the debts outstanding.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Liquidated damages	-\$250.00
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Recovery of filing fee	-\$50.00
Security deposit	\$437.50
TOTAL MONETARY AWARD	\$137.50

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$137.50** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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*.

September 4, 2018

Residential Tenancy Branch