



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Vantage West Realty
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting an Order of Possession due to unpaid rent. The Landlord also requests a monetary order for rent arrears, cleaning, repairs and other damages. The Landlord requests an order for payment of the filing fee and to retain the security and pet damage deposits.

The Landlord’s Agent appeared for the scheduled hearing. The Tenants did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes in order to enable the Tenants to call into this teleconference hearing scheduled for 9:30 a.m. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord served the Notice of Hearing on August 22, 2018 by registered mail on each party and the Canada Post tracking numbers were submitted into evidence; the final evidence package was hand-delivered to the Tenant in person on September 11, 2018. The Landlord stated that the Tenants have since vacated the rental unit and that the Application is to be amended to remove the request for an Order of Possession; this decision reflects that amendment.

Although all evidence was considered, only that which was relevant will be discussed in this decision.

Issues to be Decided

Is the Landlord entitled to a monetary order for payment of rent arrears, cleaning, repairs and other damages, pursuant to section 67 of the Residential Tenancy Act (“Act”)?

Is the Landlord entitled to retain the security and pet deposits, pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began December 15, 2017 as a fixed term to June 30, 2018, reverting to a month-to-month thereafter. Rent was \$2,300.00 per month, payable on the first of each month; a security deposit of

\$1,150.00 and a pet damage deposit of \$1,150.00 was paid. A copy of the signed tenancy agreement and addendum was submitted into evidence.

The addendum states at paragraph 5:

"Ending the Tenancy:

Should the tenancy agreement be terminated for any reason prior to the agreed length of stay (see page 2 of the tenancy agreement for length of tenancy), an administrative fee of \$200.00 will automatically apply..."

and at paragraph 9:

"Arrears

Late payment of rent is subject to a charge of \$5.00 per day, up to a maximum of \$25.00 which is due immediately..."

The Landlord states that the Tenants failed to pay the August rent of \$2,300.00 and that they vacated by August 31, 2018. They were unable to leave a forwarding address with the Landlord as they had no alternate accommodations in place. In addition to the rent arrears, the Landlord requests payment of the \$25.00 late fee. A ledger was submitted into evidence to show the rent arrears and late fee outstanding for the month of August.

The Landlord states that the carpet was not cleaned at the start of the tenancy and that the move-in inspection report notes that the carpet was dirty, but the Tenants were okay with the condition and did not request it be steam cleaned. The Landlord produced an invoice for \$630.00 for steam cleaning the carpets throughout the rental unit at the end of the tenancy, which was quite large and carpeted throughout. The Landlord states that there were some pet stains in the basement and those required extra treatment and detergent to remove. The Landlord asks that an amount be awarded for carpet cleaning expenses.

The Landlord also states that there was a new unidentified yellow stain in the one carpet and submitted a photograph; it was not organic and could not be removed by professionals. He obtained a quote for new carpeting of similar quality, which is estimated at \$861.12 to replace the entire room; the Landlord requests \$200.00 for the damaged area of the carpeting from the Tenants.

Finally, the Landlord states that there is an administrative charge of \$200.00 to be levied against the Tenants for having to file a dispute application as a result of the Tenants falling into arrears. Although the Tenants did not break the lease during the fixed term, the Landlord argues that this expense was incurred to file the application, along with the \$100.00 filing fee. The total amount claimed against the Tenants is reduced from the original application to \$3,480.10.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenants did not call into the conference call by 9:40 a.m., and I find that the Notice of Hearing was properly served on them, I proceeded with the hearing in their absence.

A tenant is obligated to pay rent when it is due, pursuant to section 26 of the Act:

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent...*

I have considered the tenancy agreement and testimony of the Landlord and I am satisfied that the Landlord has proven rent arrears in the sum of **\$2,300.00**, as well as the agreed late fee of **\$25.00** for the month of August, 2018.

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

The Applicant bears the burden of proof, on a balance of probabilities. Section 37 of the Act requires the Tenants to leave the rental unit “*reasonably clean, and undamaged except for reasonable wear and tear*”.

The Tenants had a pet that stained the carpet, which required steam-cleaning at the end of the tenancy; however, the Landlord acknowledges that it was not in a state of cleanliness at the outset and therefore I am only awarding a portion of the total steam cleaning expense in the amount of **\$500.00**. This reduced amount acknowledges that the Tenants owned a pet that made additional cleaning necessary, but also reflects the fact that the Landlord provided a carpet initially that required basic cleaning, which the Tenants are not liable for.

I find that the yellow stain that is very visible in the centre of the carpet is damage caused by the Tenants, to which they are liable. I further find that the Landlord’s estimate of carpet replacement is reasonable and that **\$200.00** for the damaged area is a reasonable expense to be charged back to the Tenants.

With respect to the administration fee and filing fee, I find that the administration fee is to be charged only if a tenant breaks their lease; in this instance, the lease was to expire June 30, 2018 and then it reverted to month-to-month. Accordingly, I find that the Tenants did not break their lease and completed the initial term; the administration fee will not be charged back to the Tenants and there is not authority under the Act for me to order the Tenants to pay for costs of filing a dispute application aside from the **\$100.00** filing fee, which I do award in favour of the Landlord.

The Landlord asks to retain the pet and security deposits in the total sum of \$2,300.00 to cover the damages and monetary order. I find that the Landlord complied with section 38 of the Act in completing a move-in and move-out inspection and that an application was made within the deadlines required.

Accordingly, I am prepared to allow the Landlord to retain the security deposit and pet deposit of **\$2,300.00** in partial satisfaction of the monetary order, which is calculated as follows:

The final monetary order is calculated as follows:

Item	Amount
Rent Arrears	\$2,300.00
Late Fee	25.00
Carpet Cleaning	500.00
Carpet Damage	200.00
Less: security deposit and pet deposit	(\$2,300)
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$825.00

This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenants fail to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Tenants are jointly and severally liable to pay forthwith to the Landlord the sum of \$825.00.

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: October 11, 2018

Residential Tenancy Branch