



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODBINE TOWNHOMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act, (the “*Act*”), for a monetary order for unpaid rent or utilities, for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in her testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by registered mail on June 22, 2018, two Canada post tracking numbers were provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenants had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present her 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 monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on November 1, 2016, as a one-year fixed term tenancy. Rent in the amount of \$1,140.00 was to be paid by the first day of each month and the Landlord had been given a \$550.00 security deposit and a \$550.00 pet damage deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that the Tenants moved out of the rental unit on December 5, 2018, without notice and refused to participate in the move-out inspection. The Landlord testified that she received an email with the Tenants forwarding address on December 5, 2018. The Landlord provided a copy of the email into documentary evidence.

The Landlord testified that they conducted the move-out inspection themselves as the Tenants refused to attend. The Landlord testified that the Tenants had left the rental unit uncleaned at the end of the tenancy. Additionally, the Landlord testified that there were three sets of blinds damaged as well as a large number of holes in the walls of the rental unit. The Landlord provided a copy of the move-in/move-out inspection, and 9 pictures of the rental unit at the end of tenancy into documentary evidence.

The Landlord testified that the Tenants had also left a number of personal items behind in the rental unit at the end of the tenancy. The Landlord is requesting \$262.82 for the costs of the waste disposal bin used to dispose of the items the Tenants left behind. The Landlord provided a copy of the receipt for the waste bin into documentary evidence.

The Landlord testified that they hired a local cleaner to clean the rental unit at the cost of \$450.00. The Landlord is requesting the recovery of the full cleaning costs. The Landlord provided a copy of the receipt for the cleaning into documentary evidence.

The Landlord testified that there was pet urine and feces in the stair landing and halfway up the stairs at the end of the tenancy. The Landlord testified that they did not attempt to clean the carpet on the stairs but had decided to remove the carpet and had new carpet installed. The Landlord testified that the carpet on the stairs had been new at the beginning of the tenancy and is requesting full removal and replacement cost, in the amount of \$572.32. The Landlord provided three receipts for the completed work into documentary evidence.

The Landlord testified that there were several holes in the walls of the rental unit at the end of the tenancy, that needed to be repaired and then repainted. The Landlord testified that the rental unit had been freshly painted at the beginning of this tenancy. When asked the Landlord could not explain the size, the number or the location of holes in the walls of the rental unit. The Landlord did testify that she believed the holes had been more than just normal wear and tear.

The Landlord is requesting \$729.41 in wall repair and painting costs. The Landlord provided three receipts into documentary evidence for the work completed to the walls of the rental unit.

The Landlord testified that there were several places where the Tenants' pet had chewed on the baseboards in the rental unit, which had caused excessive damage. The Landlord testified that they had to replace and repaint several sections of the baseboard in the rental unit. The Landlord is requesting \$420.00 in baseboard replacement and painting costs. The Landlord provided one receipt into documentary evidence for the work completed to the baseboards of the rental unit.

The Landlord testified that there was three set of damaged window coverings at the end of this tenancy. When asked to explain the damage to the window covering the Landlord testified that there had been holes in the blinds in the bedrooms and that several panels were missing from the blinds in the living room. The Landlord testified that the window coverings were new at the time the tenancy began and that they were unable to repair the existing window coverings as you could not buy replacement panels. The Landlord is requesting \$ 121.19 in cost to replace the damaged window coverings. The Landlord provided one receipt into documentary evidence for the replacement of the three window coverings into documentary evidence.

Additionally, the Landlord testified that they are seeking \$176.42 in costs of the supplies need to complete several of the repairs listed in her claim. The Landlord testified that the supplies included were light bulbs, new baseboard and cleaning supplies. The Landlord provided one receipt into documentary evidence for the supplies into documentary evidence.

Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement or, in a month to month tenancy, without giving at least one clear rental periods notice.

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I accept the undisputed testimony of the Landlord that the Tenants moved out of the rental unit without notice. I find that the Tenants breached section 45 of the *Act* when they failed to provide notice to end the tenancy to the Landlord before they moved out.

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 Tenants’ breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that she took reasonable steps to minimize the losses due to the Tenants’ breach. Therefore, I find that the Landlord has established an entitlement to the recovery of the loss of rental income for December 2017. I grant the Landlord an award of \$1140.00, for the loss of December 2017 rent.

I accept the undisputed testimony of the Landlord that the Tenants left several of the personal possession in the rental unit and left the rental unit in an unclean state at the end of the tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the Tenants breached section 37 of the *Act* when they returned the rental unit to the Landlord uncleaned and left behind several of their possession. I also find that the Landlord has provided sufficient documentary evidence to show that she suffered a loss of \$450.00 due to the unclean condition of the rental unit and \$262.82 in waste removal costs at the end of the tenancy. Therefore, I award the Landlord the return of the cleaning cost in the amount of \$450.00 and waste removal cost in the amount of \$262.82.

I also accept the undisputed testimony of the Landlord that the Tenants damaged the baseboards and three of the window coverings in the rental unit during their tenancy and that they did not repair that damage before the end of the tenancy. Section 32(3) of the *Act* states that a tenant must repair any damage to the rental property that was caused during their tenancy.

Landlord and tenant obligations to repair and maintain

32 (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that the Tenants breached section 32 of the *Act* when they damaged the baseboards and the window coverings in the rental unit. I also find that the Landlord has provided sufficient documentary evidence to show that she suffered a loss of \$420.00 due to the damage to the baseboards and \$121.19 in cost to replace the damaged window coverings. Therefore, I award the Landlord the return of the baseboard repair in the amount of \$420.00 and the return of the replacement cost of the damaged window coverings in the amount of \$121.19.

Additionally, I also find that the Landlord has provided sufficient documentary evidence to show that she suffered a loss of \$176.42 due to the purchase of supplies needed to repair the rental unit. Therefore, I award the Landlord the return of the costs associated to purchase repair supplies in the amount of \$176.42.

In regard to the Landlord's claim for the cost associated with the removal and replacement of the carpet on the stairs in the rental unit. I find that the Tenants were in breach of section 37(2) of the *Act* when they returned the rental unit to the Landlord with pet urine and feces in the carpets. I also find that the Landlord has provided sufficient documentary evidence to show that she suffered a loss of \$572.32 due to the unclean state of the carpets at the end of the tenancy. However, I find that the Landlord did not act reasonably to minimize her losses due to the Tenants' breach, when she did not attempt have the carpets cleaned.

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the Landlord was in breach of section 7(2) of the *Act* when she did not take steps to attempt to clean the dirty carpets at the end of tenancy and instead elected to replace the carpeting on the stairs. Therefore, I dismiss the Landlord's claim for the recovery of the costs associated with the removal and replacement of the carpets on the stairs in the rental unit.

The Landlord has also claimed for \$729.41 in costs to repair and repaint several holes in the walls of the rental unit. The Residential Tenancy policy guideline #1 - Landlord & Tenant – Responsibility for Residential Premises states the following:

“Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.”

I have carefully reviewed the Landlord's move-in/move-out inspection report and the pictures provided into documentary evidence, and I can find no evidence before me that would show there was damage caused to the walls of the rental unit by the Tenants. I have also reviewed the Landlord testimony regarding the walls of the rental unit, and I find that the Landlord could not clearly explain what the damage she was claiming for consisted of. In the absence for evidence to show that the Tenants damaged the walls of the rental unit, I must dismiss the Landlord's claim for the recovery of the costs associated with the repair and repainting of the walls of the rental unit.

The Landlord has also requested permission to retain the Tenants' security deposit. Section 38(1) of the *Act* provides the conditions in which a Landlord may make a claim to retain the security deposit at the end of a tenancy. The *Act* gives a landlord, 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant

Return of security deposit and pet damage deposit

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and

- (b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this case, I find that this tenancy ended on December 5, 2017, the dated the Landlord conducted the move-out inspection and took back possession of the rental unit. In addition, I accept the testimony of the Landlord that the Tenants provided her with their forwarding address that same day on December 5, 2018. Accordingly, the Landlord had until December 20, 2017, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposit.

I have reviewed the Landlord's application for this hearing, and I find that the Landlord submitted her Application for Dispute resolution to claim against the deposit on June 21, 2018. I find that the Landlord breached section 38(1) of the *Act* by not filing her claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenants are entitled to the award of double their security deposit due to the Landlord breach of the *Act*.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of \$470.43; consisting of \$1,140.00 in outstanding rent for December 2018, \$450.00 in cleaning costs, \$262.82 in waste removal and \$420.00 in baseboard repairs, \$121.19 in window

covering replacement , \$176.42 in repair supplies, and \$100.00 to recover the filing fee for this hearing, less \$2200.00 in the doubled security deposit awarded to the Tenants.

<u>Awarded Item's</u>	<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Rent - December	\$1,140.00	100%	\$1,140.00
Cleaning	\$450.00	100%	\$450.00
Waste Bin	\$262.82	100%	\$262.82
Carpet Replacement	\$572.32	0%	\$0.00
Repainting	\$729.41	0%	\$0.00
Baseboard Repair	\$420.00	100%	\$420.00
Window Coverings	\$121.19	100%	\$121.19
Repair Supplies	\$176.42	100%	\$176.42
			<u>\$2,570.43</u>
Security and Pet damage deposits held			-\$1,100.00
Deposits doubled (Filed late)			-\$1,100.00
			<u>\$370.43</u>
Filing fee			\$100.00
Due			\$470.43

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$470.43**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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*.

Dated: October 22, 2018

Residential Tenancy Branch