



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, OPC, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause, pursuant to sections 47 and 55;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:13 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were 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 landlords and I were the only ones who had called into this teleconference.

The landlords testified that the tenant was served the notice of dispute resolution package by registered mail on October 10, 2018. The landlords provided the Canada Post Tracking Number and receipt to confirm this registered mailing. I find that the tenant was deemed served with this package on October 15, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

At the beginning of the hearing the landlords testified that the tenant moved out of the subject rental property between October 20-21, 2018; therefore, the landlords withdrew their application for an Order of Possession.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlords, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords provided the following undisputed testimony. This tenancy began on April 1, 2017 and ended between October 20-21, 2018. Monthly rent in the amount of \$2,200.00 was payable on the first day of each month. A joint security and pet deposit of \$1,100.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenant did not provide the landlords with a forwarding address.

The landlords provided the following undisputed testimony. A joint move in inspection was completed by both parties and the move in inspection report was signed by both parties. The move in condition inspection report was entered into evidence. The move in condition inspection report states that the carpet on the stairs is in fair condition and that the subject rental property was clean on move in.

The landlords provided the following undisputed testimony. The landlords tried to contact the tenant via text and e-mails to complete the move out inspection report, but the tenant did not return their e-mails or texts. The landlords entered into evidence an e-mail to the tenant dated September 29 which requests that the tenant meet the landlords on October 31, 2018 by 1:00 p.m. to complete the move out inspection report. The landlords testified that they sent other e-mails requesting the tenant attend at the subject rental property for a move out inspection report, but that they were unable to locate them during the hearing. A move out condition inspection report was not completed.

The landlords testified that the tenant vacated the subject rental property in accordance with a 10 Day Notice to End Tenancy for unpaid rent with an effective date of October 19, 2018. The landlords testified that they received an Order of Possession through a direct request proceeding and were also issued a Monetary Order in the amount of \$2,300.00 which was comprised of \$2,200.00 in unpaid rent and \$100.00 for the filing fee.

The landlords testified that the carpet on the stairs of the subject rental property was destroyed by the tenant's cats and that it had to be replaced. The landlords entered into evidence photographs of the shredded carpet as well as text messages from the tenant acknowledging the damage. The landlords testified that it cost \$634.12 to replace the damaged carpet and that the carpet in the subject rental property was approximately six years old. A receipt in the amount of \$634.12 was entered into evidence.

The landlords testified that the tenant left the subject rental property utterly disgusting and that it took a cleaner 2.5 days to make the property habitable. The landlords are claiming for the cost of that cleaner. The landlords entered a receipt for cleaning in the amount of \$680.00.

The landlords testified that the subject rental property was so dirty, and the walls were so damaged and stained that it required re-painting. The landlords testified that the subject rental property was last painted two years ago with some touch ups one year ago. Landlord E.K. testified that he is a professional painter and that it took him approximately 20 hours to paint the subject rental property. The landlords are seeking to recover \$1,200.00 for landlord E.K.'s time at a rate of \$60.00 per hour. Landlord E.K. testified that this is a discounted rate from what he would normally charge. The landlords are also seeking to recover the material costs of re-painting the unit in the amount of \$165.88. A receipt for painting materials in that amount was entered into evidence.

The landlords testified that the tenant did not pay her last electricity and gas bills. The landlords testified that the tenant was supposed to pay 60% of each bill. The tenancy agreement states that the tenant is required to pay 60% of the gas and electricity bill.

The landlords entered into evidence an electricity bill from September 2018 in the amount of \$159.86 and are seeking the tenant to pay 60% of that bill in the amount of \$95.92. The landlords entered into evidence a gas bill with a billing date of September

10, 2018 in the amount of \$74.00 and are seeking the tenant to pay 60% of that bill in the amount of \$44.40.

Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order 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.

Section 37 of the *Act* states 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.

Based on the landlords' testimony, I find that the rental unit required significant cleaning. The landlords submitted into evidence a cleaning receipt totaling \$680.00. I find that the tenant is responsible for this cleaning fee.

Policy Guideline #40 states that the useful life for carpet is 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately four years (48 months) of useful life that should have been left for the carpet of this unit. I find that since the carpet required replacing after only six years (72 months), the tenant is required to pay according to the following calculations:

$\$634.12 \text{ (cost of carpet)} / 120 \text{ months (useful life of carpet)} = \$5.28 \text{ (monthly cost)}$

$\$5.28 \text{ (monthly cost)} * 48 \text{ months (expected useful life of carpet after tenant moved out)} = \mathbf{\$253.44}$

Policy Guideline #40 states that the useful life for interior painting is four years (48 months). Therefore, at the time the tenant moved out, there was approximately 24 months of useful life that should have been left for the interior paint of this unit. I find that since the unit required repainting after only 24 months, the tenant is required to pay according to the following calculations:

$$\text{\$1,200.00 (cost of labour) + \$165.88 (material costs) = \$1,365.88}$$
$$\text{\$1,365.88 (total cost of painting) / 48 months (useful life of paint) = \$28.45 (monthly cost)}$$
$$\text{\$28.45 (monthly cost) * 24 months (expected useful life of paint after tenant moved out) = \$682.80}$$

The tenancy agreement states that the tenant is responsible for paying 60% of gas and electricity charges. Based on the testimony of the landlords, I find that the tenant failed to pay the gas and electricity bills entered into evidence. I find that the tenant owes the landlord \$95.92 for the September 2018 electricity bill. I find that the tenant owes the landlord \$44.40 for the September 10, 2018 gas bill.

Security Deposit

Section 38 of the *Act* states that 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.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit

due to the tenant. I find that the landlords are entitled to retain the tenant's entire security and pet damage deposit in the amount of \$1,100.00 in part satisfaction of their monetary claim against the tenant.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Cleaning	\$680.00
Carpet	\$253.44
Paint	\$682.80
Electricity bill	\$95.92
Gas bill	\$44.40
Filing Fee	\$100.00
Less deposits	-\$1,100.00
TOTAL	\$756.56

The landlords provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: November 21, 2018

Residential Tenancy Branch