



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlords' application pursuant to the *Residential Tenancy Act*, ("the Act") for:

- A Monetary Order for Damage for the Landlords – Security deposit(s) applied to the claim, pursuant to section 67 and 72 (2) of the Act;
- A Monetary Order for Rent and/or utilities for the Landlords – Security deposit(s) applied to the claim, pursuant to section 67 of the Act and;
- Authorization to recover the filing fee from the Tenant, pursuant to section 72 of the Act.

The Landlord (T.A.) attended the hearing for both landlords. The Tenant also attended this teleconference hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony and to present evidence.

The Tenant confirmed receipt of the Notice for Dispute Resolution and the Landlords' evidentiary materials for this hearing. I find the Tenant was duly served as per section 89 of the Act.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for Damages—with the security deposit(s) applied to the claim;
- Are the Landlords entitled to a Monetary Order for Rent and/or utilities – with the security deposit applied to the claim; and
- Are the Landlords entitled to recover the filing fee from the Tenant?

Preliminary Issue: Evidence:

The Landlord and the Tenant referenced the Landlords' evidence that was not available to the Arbitrator. The Landlord stated that the evidence was submitted to Residential Tenancy Branch (RTB) in person by the Landlord. The Landlord and the Tenant referenced the same evidence. I proceeded with the hearing.

At the end of the hearing I asked RTB's Information Services to contact the Landlord to re-submit the evidence reference in the hearing.

The Landlord submitted the evidence as requested and I am satisfied that the 20 pages of evidence delivered by the Landlord, is the same evidence served on the Tenant and referenced by the parties during their testimony.

Background and Evidence

The parties agreed that this tenancy started on June 1, 2017. Rent was payable on the 1st of the month in the amount of \$1200. A security deposit was paid by the Tenant in the amount of \$600. A condition inspection report was completed at the start of the tenancy. The Landlord and Tenant had difficulty arranging a meeting time to conduct the initial condition inspection report together, consequently the Landlord posted the report on the Tenant's door and the Tenant completed it, signed it and returned it to the Landlord who also signed it. A copy of the condition inspection report was submitted in evidence and referenced by the parties.

The parties also agreed that the Tenancy ended as a result of the Landlord issuing a 10 Day Notice To End Tenancy for Unpaid Rent or Utilities (the notice). The notice was issued on April 3rd, 2018, for non-payment of rent. The notice was posted on the Tenant's door. The Tenant vacated the rental unit around April 12, 2018, as per the notice. The Tenant did not pay April's rent, nor did he provide a forwarding address or claim the security deposit. When the Tenant moved out of the rental unit, he left some of his belongings behind.

The Landlord testified that the Tenant failed to pay rent on the April 1, 2018. On April 2, 2018, the Landlord reminded the Tenant that rent was overdue, and asked when the Tenant would pay? The Tenant responded vaguely and stated in a few weeks. As the Tenant did not give a specific date when rent would be paid, the Landlord served the Tenant with the notice to vacate on April 3rd, 2018. The notice was served by Registered mail. The Tenant did not pay the owed rent or made any contact with the

Landlord. On or about April 15, 2018, the Landlord realized that the Tenant had left the rental unit.

The Landlord seeks a monetary order and claims the security deposit for unpaid rent, for a damaged carpet and linoleum; cleaning of appliances and cupboards, removal of car batteries and wall repairs and painting expenses.

ITEM	AMOUNT
Unpaid April 2018 Rent	1,200.00
Disposal of Garbage, Cleaning and Repairs	719.25
Carpet Cleaning	315.00
Filling Fee	100.00
TOTAL =	\$2,334.25

The Tenant testified that he was in hospital on April 1, 2018 and did not know when he would be able to pay rent, as he had fallen into hard times. The Tenant claims he was illegally evicted, however he confirmed he received the notice and did not file an application for dispute resolution, nor did he pay April rent. He vacated the rental unit as per the 10 Day Notice on or around April 12, 2018.

The Tenant described an acrimonious relationship with the Landlord and stated he did not want to go through any further trouble and decided to vacate as per the notice. The Tenant stated he felt he was entitled to claim against the Landlords for harassment, and pain and suffering. The Tenant was advised that if he feels he has a claim against the Landlord, he may contact information services at RTB to obtain information and guidance in that process and that his claim cannot be considered in this application.

The Tenant confirmed that he did not claim the security deposit because, in his opinion, the security deposit was for the Landlord to keep and pay any damages and cleaning, that may be required.

The Tenant testified that the carpet and linoleum were old and in poor condition at the start of the tenancy, and that he had to request the Landlord to steam clean the carpets twice. The Tenant testified that he only vacuumed the carpets when he left.

Analysis

Section 46 of the *Residential Tenancy Act* sets the actions a Landlord may take when a Tenant fails to pay rent:

LANDLORD TO TENANT

(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is **not earlier than 10 days after the date the tenant receives the notice**.

Tenant dispute of landlord's notice

(4) **Within 5 days after receiving a notice** under this section, a tenant may
(a) pay the overdue rent, in which case the notice has no effect, or
(b) dispute the notice by making an application for dispute resolution.

The Tenant breached the tenancy agreement by failing to pay rent of \$1200.00 on the first of the month. The Landlord had the statutory right to issue the Tenant with a the notice.

The Tenant had statutory remedies available to dispute the Landlord's notice and failed to exercise those rights. The Tenant instead elected to abandon the rental on or about April 12, 2018.

As the Tenant breached the Act and did not properly end the tenancy by giving proper notice or paying rent when it was due.

I find the Landlord is entitled to recover the owed rent for the month April 2018.

A Condition Inspection Report was referenced by the parties and submitted in evidence; and it is signed and dated by the Landlord and Tenant. The condition inspection report notes that "the closet doors need to be installed, missing bug screens on ext. bedroom window, entrance and **kitchen lanolium heavily damaged along with heavily stained carpets**". [Emphasis added]

I find the Condition Inspection Report complies with Section 23 of the Act.

Section 67 of the Act establishes that if damage or loss results from a tenancy agreement an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act, on the part of the other party.

Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the Landlord to prove his entitlement to a claim for a monetary award.

After reviewing the evidence and considering the oral testimony of both parties, I find that the Landlord has demonstrated entitlement to a monetary award related to the disposal of garbage, cleaning, painting and repairs of the unit, as per section 37 of the Act. Consequently, I find the Landlord is entitled to recover \$719.25 for the expenses incurred and corroborated by evidentiary receipt.

I find the Tenant's and Landlord's testimony related to the condition of the linoleum and the carpet at the start and end of the tenancy to be inconsistent. The Tenant pointed to the condition inspection report noting the linoleum and carpets were heavily stained and testified that the Landlord had to clean the carpets twice. While the carpet and linoleum may have been stained as per the condition inspection report, the parties agreed that the carpets were cleaned twice, and remained stained. I find the Landlord's claim for carpet cleaning of a heavily soiled carpet is questionable, as the receipt submitted in evidence not only references carpet cleaning but also mentions "painting and renovations". The Tenant questioned the validity of the receipts and attributed them to being issued by a friend, however he provided no evidence to that. The Landlord testified that the house was built in 1996 and that the carpets and linoleum were in their original condition. I find that given the contradictory evidence, the landlord has not established a claim. I dismiss the Landlord's claim for carpet cleaning without leave to re-apply.

The Tenant abandoned the rental suite and did not leave a forwarding address. The Landlord did not complete a move-out condition inspection report at the end of the tenancy, however based on the evidence, I find the Landlord has not extinguished their right to file a claim against the deposit for damage to the rental unit. Based on the balance of probabilities and the preponderance of evidence before me, I am satisfied with respect to the damages, even in the absence of the report.

As per sections 38 (4)(b) and 72 of the Act, I find the Landlord is entitled to keep the security deposit.

As the Landlords are partly successful in their claim, I find they are entitled to recover part of the filing fee, being \$50 from the Tenant.

In summary, I award the Landlord:

ITEM	AMOUNT
Unpaid April 2018 Rent	1,200.00
Disposal of Garbage, Cleaning and Repairs	719.25
Carpet Cleaning (dismissed without leave)	0.00
Filing Fee (1/2 of the amount claimed)	50.00
Deduct Security Deposit	(600.00)
TOTAL =	\$1369.25

Conclusion

I issue a Monetary Order of \$1369.25 in favour of the Landlords.

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: December 17, 2018

Residential Tenancy Branch