



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage or loss, and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing and gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call. The landlord testified that the tenant was served with the application and notice of this hearing on September 20, 2018 by registered mail to an address provided by the tenant, and the landlord has provided a copy of a Registered Domestic Customer Receipt and a Canada Post cash register receipt bearing that date. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord has also provided evidentiary material electronically to the Residential Tenancy Branch on-line system however I could not open the 3 videos which were not visible during the time of the hearing or at the date of this Decision.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenant for damage or loss under the tenancy agreement or the law?

Background and Evidence

The landlord testified that this month-to-month tenancy began 5 or 6 years ago. No security deposit or pet damage deposit was collected from the tenant, and there is no written tenancy agreement. The rental unit is a basement suite and the landlord resides in the upper level of the home. The tenant moved out on or about August 23, 2018, having given notice to vacate the rental unit on August 15, 2018 effective September 14, 2018. Rent in the amount of \$900.00 per month was payable on the 1st day of each month, but

the tenant paid only half a month's rent for September, 2018. The landlord claims unpaid rent in the amount of \$450.00.

The landlord further testified that the tenant did not leave the rental unit reasonably clean and the landlord retained the services of a cleaner for a cost of \$120.00. No receipt has been provided for this hearing, however the landlord testified that it took 3 days to complete the cleaning. The oven, cabinets, bathroom and carpets were seriously soiled and garbage and debris had to be removed from the rental unit.

The carpets were new about 6 or 7 years ago, and were left seriously stained and smelled bad at the end of the tenancy and had to be replaced. The landlord has provided a copy of a receipt dated August 27, 2018 in the amount of \$855.00 which the landlord claims as against the tenant.

The landlord also had to repaint, and although no receipts have been provided for this hearing, the landlord testified that he purchased 2 cans of paint at a cost of \$60.00, which the landlord claims against the tenant. The rental unit was not repainted during this tenancy.

The landlord advertised the rental unit after the tenant vacated, and it took until sometime in October, 2018 to find a suitable tenant, for \$1,250.00 per month. The landlord claims that amount from the tenant as loss of rental revenue.

Analysis

I accept the undisputed testimony of the landlord that rent in the amount of \$900.00 per month was payable on the 1st day of each month. A tenant must give notice to end a tenancy the day before rent is payable, and such notice must be effective by the last day of the following month. In this case, the tenant paid \$450.00 for September's rent, but by not giving notice to vacate until mid-August, the effective date must be September 30, 2018, and the tenant is still liable for the balance of \$450.00.

With respect to further loss of rental revenue, in order to be successful, the landlord must be able to demonstrate that he advertised within a reasonable time after receiving the tenant's notice to vacate, and that the inability to re-rent was due to the tenant's failure to comply with the *Residential Tenancy Act* or the tenancy agreement. If successful in establishing that, the landlord would be entitled only to the amount of rent that the tenant had been paying, not the amount the landlord was successful in re-renting for. In this case, the tenant actually vacated on or about August 23, 2018; the landlord testified that the cleaning took about 3 days; and carpets were replaced on or about August 27, 2018. I am not satisfied that the landlord's inability to re-rent for October 1, 2018 was a result of

the tenant's failure to comply with the *Act* or the tenancy agreement, and I dismiss the landlord's application for loss of rental revenue.

I also accept the undisputed testimony of the landlord that due to stains and the smell the carpet had to be replaced at the end of the tenancy for a cost of \$855.00. However, any award must not put the landlord in a better financial situation than the landlord would be if no damage had occurred. In other words, if the tenant had not left the carpet stained or damaged, the landlord would have a 6 year old carpet, not a new carpet, and I pro-rate the landlord's claim. I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of carpet at 10 years. I find that there were 4 years of remaining life, and the landlord has established a claim of \$342.00 ($\$855.00 / 10 = \$85.50 \times 4 \text{ years remaining} = \342.00).

I also find that the amount claimed for cleaning the rental unit is reasonable, given the testimony that it took 3 days to clean out debris, cabinets, the oven and bathroom.

The useful life of interior paint is 4 years, and in this case the landlord testified that the tenancy lasted 5 or 6 years and the rental unit was not re-painted during that time. Therefore, I dismiss the landlord's claim for paint.

Since the landlord has been partially successful, the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,012.00. This order is final and binding and may be enforced.

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: January 10, 2019

Residential Tenancy Branch