



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF / MNDC MNSD

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for compensation for unpaid rent, loss or damage pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenants:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The parties confirmed service of the respective applications and evidence on file.

Issues

Is the landlord entitled to a monetary award for compensation for unpaid rent, loss or damage?

Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for compensation for loss?

Background & Evidence

The tenancy for this two bedroom rental unit began on approximately July 1, 2013 with a monthly rent of \$1000.00 payable on the 1st day of each month. The tenancy ended on September 10, 2018. The tenant paid a security deposit of \$500.00 at the start of the tenancy which the landlord continues to hold.

The landlord is claiming \$562.50 in unpaid rent for the period of September 16-30, 2018. The landlord claims the tenant was issued a 10 Day Notice to end tenancy on September 2, 2018 for failing to pay September 2018 rent. The tenant only paid half the month's rent and vacated on September 10, 2018.

The landlord is claiming \$1787.42 for having to replace the carpets in the rental unit. The landlord testified the house was built in 1990 and that the rental unit had been rented for 5 years prior to this tenancy. The landlord testified that she believed the carpets in the rental unit were replaced one year prior to the beginning of this tenancy but she was not sure. The landlord testified the tenant failed to clean the carpets at the end of the tenancy and they were covered with stains from pet urine and feces. The landlord testified the carpets were covered in thick mud which had to be cleaned. The landlord submitted photos of the condition of the carpet. The landlord testified the entire carpet needed to be replaced as she could not get rid of the smell. The landlord acknowledged that the condition inspection report completed on move-in and move-out did not include any comments in regards to the carpets other than under the flooring section which indicated "o.k." on move-in.

The landlord is also claiming \$100.00 for damage to a door. The landlord testified the door would not close properly. The landlord also submits the door was scratched by the tenant's pet although she does not appear to be claiming for this damage. The landlord appears to argue the door was damaged due to the tenant's pet pounding on it. The landlord submits the door needed to be realigned and submitted an invoice for this amount.

The tenant did not dispute the landlord's claim for unpaid rent for the second half of September 2018.

The tenant testified that she had the carpet professionally cleaned at the end of the tenancy. The tenant submits the carpet was old and had no underpadding. The tenant submits that the carpet also had some pre-existing paint stains at the time of move-in and the landlord was aware of this. The tenant submits that her dog was fully trained

and would not have caused the damage alleged by the landlord. The tenant submits that the move-out condition report makes no mention of any issues with the carpets. The tenant submits that the landlord stated everything was okay on move-out with the exception of a scratch on the door.

The tenant acknowledges the door was scratched by her pet but disputes the landlord's claim that she caused any other damage to the door. The tenant testified that a week prior to the end of the tenancy, the door started to warp at the top and she had mentioned this to the landlord.

In regard to the tenant's own application, the tenant is claiming compensation for two illegal rent increases imposed by the landlord. The tenant claims the landlord raised the rent by \$75.00 in November 2016 versus the allowable amount of \$37.00 and only provided two months' notice for the increase versus the required 3 months. The tenant also claims the landlord implemented another rent increase in December 2017 by increasing the amount by \$50.00 versus the allowable amount of \$41.48 and again only provided two months' notice.

The landlord argues the tenant had verbally agreed to the increases as the landlord had lost her job at the time. The landlord submits that the first increase was only \$65.00 not \$75.00 as \$10.00 was for extra T.V. channels the tenant requested and was previously paying for.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 26 of the Act requires that 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.

Section 37 of the Act requires 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.

I accept the landlord's evidence in support of the claim for unpaid for September 2018. The tenant was responsible to pay rent in full on September 1, 2018 as per the tenancy agreement. The tenant only paid for half month's rent and vacated the rental unit after being served with Notice to End Tenancy. The tenant did not dispute this part of the landlord's claim. I award the landlord the amount of **\$562.50** as claimed.

I find the landlord provided insufficient evidence that the carpets needed to be replaced in their entirety versus just cleaned. Although, the pictures submitted by the landlord may support the carpets were not left reasonably clean, I find they are insufficient proof of the carpets needing to be replaced. The condition inspection report made absolutely no mention of the condition of the carpets on move-out which would have been reasonable had the carpets been in bad as shape as alleged by the landlord.

Further, the landlord provided insufficient evidence on the age of the carpets. The landlord testified the carpets were replaced one year prior to beginning of this tenancy but she was unsure of this. I find the carpets were at least ten years old as per the landlord's testimony that the rental unit was rented for five years prior to this current five year tenancy. I find it improbable that the landlord would have replaced the carpets in the middle of the previous tenancy. The carpets also appear to be at least ten years old in the pictures submitted by the landlord.

Residential Tenancy Policy Guideline 40, Useful Life of Building Elements, provides that carpets have a useful life of ten years. As I have determined the carpets to be at least ten years, I find the carpets had exhausted their useful life. This part of the landlord's claim is dismissed.

The landlord's claim for damage to the door is also dismissed. I find the landlord submitted insufficient evidence that the door would not close due to the actions or neglect of tenant or the tenant's pet. I find it improbable that a pet could cause such damage.

The landlord is entitled to a total awarded **\$562.50**.

As the landlord was only partially successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application from the tenant.

The landlord continues to hold a security deposit in the amount of \$500.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

The landlord is granted a monetary order for the balance of \$62.50.

As for the tenant's claim for recovering amounts paid for illegal rent increases imposed on November 2016 and December 2017, I find the tenant did not take reasonable steps to mitigate the loss as required by section 7 of the Act. I find that although the tenant did not provide written authorization for the increases, the tenant did accept the increases by continuing to pay the increased rent over a period of approximately 2 years. There is no evidence that the tenant ever raised this issue or objected to these increases at the time they were implemented.

As the landlord has already been awarded to retain the tenant's security deposit, the tenant's claim for return of the deposit is also dismissed.

Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$62.50. 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: January 14, 2019

Residential Tenancy Branch