



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 2:00 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord had an assistant attend the hearing as well although they provided no oral testimony.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord gave written evidence that the Application for Dispute Resolution (Application) was personally served to the tenant with a witness on September 20, 2018. In accordance with section 89 of the *Act*, I find that the tenant is duly served with the Application.

The landlord gave undisputed affirmed testimony that the evidentiary package was personally served to the tenant on December 12, 2018. In accordance with section 88 of the *Act*, I find that the tenant is duly served with the evidence.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

Written evidence was provided showing that this tenancy began on May 01, 2018, with a monthly rent of \$2,050.00, due on the first day of each month with a security deposit in the amount of \$1,025.00 that the landlord currently retains. The landlord submitted that the tenancy ended based on a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) issued in August 2018.

The landlord also provided in evidence:

- A copy of a witnessed statement regarding personal service of the Application to the tenant on September 20, 2018;
- Copies of pictures taken of a dirty floor and drywall screws along with other holes in the wall of the rental unit;
- A copy of an invoice in the amount of \$1,375.00 for the prep and painting of the rental unit dated September 22, 2018;
- A copy of an invoice dated September 05, 2018, in the amount of \$55.31 for the purchase of a lighting cover and a toilet paper handle;
- A copy of an invoice in the amount of \$2,750.00 for the replacement of the floor in the rental unit;
- A copy of a receipt dated October 19, 2018, for the re-keying of the deadbolt for the rental unit in the amount of \$48.65;
- A copy of a receipt dated September 10, 2018, for the replacement of a stove light bulb in the amount of \$7.52;

- Two copies of receipts, one dated September 19 and the other October 19, 2018, for the purchase of two fobs in the amount of \$75.00 for each;
- A copy of a receipt dated September 07, 2018, for the cleaning of the rental unit in the amount of \$300.00;
- A copy of a receipt for a closet part in the amount of \$15.94;
- A copy of a receipt for a part for a different closet part in the amount of \$11.98; and
- A copy of a Monetary Order Worksheet detailing the landlord's monetary claim;

| Item | Amount |
|---|-------------------|
| Painting of the Rental Unit | \$1,375.00 |
| Replacing flooring | 2,750.00 |
| Toilet Paper Holder and lighting cover | 55.31 |
| Re-key deadbolt | 48.65 |
| Fob Replacements \$75.00 X 2 | 150.00 |
| Light Bulb Stove | 7.52 |
| Metered Parking – no receipts | 20.00 |
| Cleaning | 300.00 |
| Closet door | 27.92 |
| Application Fee | 100.00 |
| Requested monetary award for damages = | \$4,834.40 |

The landlord gave undisputed affirmed testimony that this tenancy ended based on unpaid rent in August 2018 .The landlord stated that \$2,350.00 was initially owing as of August 2018, but that the tenant made three payments of \$300.00 for a total of \$900.00 since then. The landlord submitted that the amount of outstanding unpaid rent for August 2018 is \$1,450.00. The landlord submitted that they are also seeking lost rent in the amount of \$2,050.00 for September 2018 for a total of \$3,500.00 in unpaid rent.

The landlord gave undisputed affirmed testimony that the tenant had sublet the rental unit without the landlord's permission and that the occupants in the rental unit had a dog that ruined the flooring. The landlord submitted that new carpets had been installed in the rental unit in 2012. The landlord testified that the wall was also damaged by the occupants or the tenant which required re-painting of the rental unit. The landlord stated that the rental unit was last painted in May 2017. The landlord submitted that the rental unit required cleaning as well as other repairs at the end of the tenancy and referred to the invoices submitted in evidence.

The landlord testified that the tenant did not return the keys to the rental unit and the keyless entry devices for the building at the end of the tenancy. The landlord also requested recovery of metered parking fees for the times they attended the rental unit during the end of the tenancy.

The landlord requested the recovery of a filing fee for a previous hearing but confirmed that they already had a Monetary Order for the amount requested. The landlord confirmed that no Condition Inspection Report for either the beginning or the end of the tenancy was submitted into evidence.

Analysis

Section 7 (1) of the *Act* states that if a landlord or tenant does not comply with this *Act*, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the onus is on the landlord to prove entitlement to their claim for the monetary award. As the landlord did not submit a Condition Inspection Report to establish the condition of the walls or floors at the start of the tenancy, I find that I will only grant monetary awards for these items based on their expected useful life in relation to the time at which they were replaced. I will use *Residential Tenancy Policy Guideline #40*, to determine exactly how much money the landlord should be compensated for their loss. *Policy Guideline #40* provides general direction on determining the general useful life of building elements. This guideline notes that, "Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances."

As per *Residential Tenancy Policy Guideline #40*, the useful life of interior paint is 4 years (or 48 months). Having reviewed the undisputed affirmed testimony and evidence, I find that the landlord has proven that they have incurred a loss for the painting of the rental unit and I accept their undisputed submission that this loss was caused by the neglect of the tenant in violation of the *Act*, beyond reasonable wear and tear.

Based on the residential tenancy guideline's expected life of 48 months for the painting of the rental unit and considering that it was 16 months since the rental unit was last painted, I find that the painting should have had an expected useful life of another 32 months. Therefore, I allow the landlord to recover \$916.67 for the painting of the rental unit. $((\$1,375.00/48) \times 32 \text{ months})$

As per *Residential Tenancy Policy Guideline #40*, the useful life of carpet is 10 years (or 120 months). Having reviewed the undisputed affirmed testimony and evidence, I find that the landlord has proven that they have incurred a loss for the replacement of the floor in the rental unit and I accept their undisputed submission that this loss was caused by the neglect of the tenant in violation of the *Act*, beyond reasonable wear and tear.

Based on the residential tenancy guideline's expected life of 120 months for carpets and considering that it was approximately 84 months since the rental unit was last painted, I find that the carpets should have had an expected useful life of another 36 months. Therefore, I allow the landlord to recover \$825.00 for the replacement of the floors. $((\$2,750.00/48) \times 36 \text{ months})$

During the hearing the landlord gave undisputed testimony that the keys to the rental unit and the keyless entries were not returned at the end of the tenancy. Having reviewed the evidence and affirmed testimony, I accept the landlord's submission that the tenant did not return the items as noted above and I find that the landlord has proven that they have incurred a loss for the re-keying of the rental unit and for the purchase of two keyless entry devices. Therefore, I allow the landlord to recover the entire amount of \$150.00 for the two keyless entry devices and \$48.65 for the re-keying of the deadbolt.

I accept the landlord's undisputed evidence and affirmed testimony that they have incurred a loss for the replacement of the lighting cover, broken toilet handle, the closet parts, the light bulb stove and for the cleaning of the rental unit and I allow the landlord to recover the full amounts requested for these items.

Regarding the metered parking, I find that this is not a recoverable amount as it is considered the cost of doing business as a landlord and not a loss under the Act. Therefore I dismiss the tenant's request for this amount, without leave to reapply.

As the landlord has already received a Monetary Order for the filing fee for a previous hearing, I find that I have no jurisdiction to award another order for the same amount as it has already been decided.

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the undisputed written evidence and affirmed testimony of the landlord, I find there is no evidence before me that the tenant had any right under the *Act* to withhold any rental payments. Therefore, I find that the landlord is entitled to a monetary award in the amount of \$3,500.00 for unpaid rent owing for this tenancy for August 2018 and September 2018.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in their application, they may recover the filing fee related to this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to recover costs associated with damage to the rental unit, to retain the tenant's security deposit and to recover the filing fee for this Application:

| Item | Amount |
|--|----------|
| Painting of the Rental Unit | \$916.67 |
| Replacing flooring | 825.00 |
| Toilet Paper Holder and lighting cover | 55.31 |

| | |
|--|-------------------|
| Re-key deadbolt | 48.65 |
| Fob Replacement X 2 | 150.00 |
| Light Bulb Stove | 7.52 |
| Cleaning | 300.00 |
| Unpaid Rent owing for August 2018 and September 2018 | 3,500.00 |
| Less Security Deposit | -1,025.00 |
| Filing Fee for this Application | 100.00 |
| Total = | \$4,878.15 |

The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: February 08, 2019

Residential Tenancy Branch