



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

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

- a monetary order for unpaid rent, damage and/or loss 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.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 11:35 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

In a decision dated January 17, 2019, the landlord's application for substituted service to an e-mail address provided by the tenants was granted.

The landlord testified that on January 21, 2019, copies of the Application for Dispute Resolution, Notice of Hearing and evidence package were sent to the tenants by e-mail. The landlord submitted a copy of the e-mail with a read receipt confirming the e-mail was received and opened.

Based on the above evidence, I am satisfied that the tenants were deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing. The hearing proceeded in the absence of the tenants. The tenants uploaded a considerable amount of evidence on file. As the tenants did not attend the hearing to present this evidence, none of it has been considered in this decision.

Issues

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

Is the landlord entitled to retain all or a portion the security deposit?

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

Background and Evidence

The tenancy for this three bedroom basement began on November 1, 2015. On December 22, 2018 the landlord discovered the rental unit had been abandoned. The monthly rent at this time was \$1000.00 per month. The tenants paid a security deposit of \$400.00 at the start of the tenancy which the landlord continues to retain. A move-in condition inspection report was completed on November 1, 2015. The tenants abandoned the unit and did not participate in the move-out condition inspection conducted by the landlord on December 30, 2018. The landlord purchased the house in 2003. The house is approximately 20 years old.

The landlord submitted a "monetary order worksheet" which provides a breakdown of the landlord's claims totaling \$12,910.00. The landlord's evidence submissions and testimony for each of these items is summarized as follows:

Item #1 – The landlord submitted a quote in the amount of \$11,750.00. The quote is one-lump sum amount for the following: carpet removal and installation, odor removal, painting, missing kitchen drawer cover replacement and post project cleaning. The landlord testified he was only able to submit a quote as the actual repair work has not yet been done as he cannot afford to do it. The landlord testified the unit has not since been re-rented and is still empty.

The landlord testified the tenants left the carpets completely damaged. The landlord testified the entire carpets needed to be replaced as they were destroyed by the tenants' cat. The landlord testified the tenants left the carpets stained with cat feces and significant odor. The landlord submitted various pictures and videos detailing the condition of the carpets. The landlord testified that he did renovations when he purchased the rental unit in 2003 so the living room area carpet was 15 years old. The landlord testified the carpet in two of the bedrooms was only 4 years old and in the third bedroom only 6 years old.

The landlord testified that the tenants left holes and cracks in the walls. The landlord testified that one bedroom was completely re-painted by the tenants to a black color. The landlord submitted pictures and videos in support of the condition of the walls, baseboards and door casings. The landlord testified that the rental unit was painted just

before the tenants took possession. The landlord submitted pictures of the unit before the tenant's moved in.

The landlord testified that one kitchen drawer cover was completely broken a picture of which was submitted.

Item #2 – The landlord is claiming \$560.00 for junk removal. The landlord amended this amount to \$400.00 in the hearing. The landlord testified this is the amount it actually cost him to remove all the junk left behind by the tenants. The landlord submitted various pictures and videos in support. The landlord testified that he has a receipt for this expense but he forgot to upload this particular piece of evidence. The landlord testified that he paid someone to remove the junk.

Item #3 – The landlord is seeking to retain the \$400.00 security deposit.

Item #4 – The landlord is claiming \$2000.00 for unpaid rent for December 2018. The landlord testified the tenants only paid \$800.00 for this month.

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.

Item #1– I accept the landlord's uncontested testimony, picture and video evidence and find the tenants did not leave the rental unit undamaged at the end of the tenancy. I accept the tenants caused considerable damage to the carpets from cat feces and scratches requiring the landlord to replace the carpets.

I also accept the landlord's claim that the tenants did cause some damage to the walls, paint, doors and door casings etc. which require some repair. I accept the landlord's testimony that the unit was painted prior to the tenant's moving in. The before pictures submitted by the landlord support the condition of the paint upon move-in. However,

the landlord's quote includes painting of the entire unit including the ceilings which I find is not supported by the evidence.

I accept the landlord's claim that one of the kitchen drawers was left broken.

The landlord submitted one lump sum quote for replacing carpets, odor removal, painting and kitchen drawer. The quote does not break down the cost of each repair item, but presents a comprehensive sum for all work listed.

Residential Policy Guideline #40 sets out the useful life of building elements to be used when calculating damages owed to a party. Different elements have different useful lives. A landlord who suffers a loss due to the actions of the tenant is not entitled to recover the entire cost of replacing an item as the landlord retained some benefit of the item up until it was damaged. The landlord is entitled to damages based on what useful life the item should have had left after the tenant(s) vacated. Under this policy, the useful life of carpets is 10 years and useful life of paint is 4 years. The landlord testified the carpets ranged from 4-15 years old and the paint was approximately 3 years old.

Since the landlord's quote does not break down the expense of each item, I am not able to calculate the amount of loss suffered by the landlord based upon the remaining useful life of each item. I find that the landlord has not met his burden of proof as to the quantification of his damages.

I find the landlord did suffer a loss but this loss is difficult to quantify in the absence of the work actually being performed and an itemized invoice being provided. Based upon the evidence submitted and taking into consideration the age of the rental unit and individual useful life of the damaged items, I find that an award of \$2000.00 to be reasonable in the circumstances.

Item #2 –The landlord submitted numerous pictures and video evidence which supports that the tenants left a considerable amount of junk behind at move-out. The landlord failed to submit an invoice in support of the amount claimed for junk removal. However, I find the landlord did suffer a loss. The landlord is awarded a nominal amount of \$200.00 which I find to be a reasonable amount considering the amount of junk left behind.

Item #3 – The landlord is seeking to retain the security deposit. This is addressed below.

Item #4 – I accept the landlord's undisputed testimony and find the tenants failed to pay the full rent that was due on December 1, 2018. The landlord is awarded \$200.00 as claimed.

The landlord has established an entitlement to an award of \$2,400.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$2500.00.

The landlord continues to hold a security deposit in the amount of \$400.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$2,100.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,100.00. Should the tenants 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: April 3, 2019

Residential Tenancy Branch