



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL-S FFL MNDCL-S

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed..

Issue(s) to be Decided

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

Is the landlord entitled to recover the cost of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on June 1, 2014, and ended on November 30, 2018. Monthly rent was set at \$1,078.48 at the end of the tenancy, payable on the first of every month. The tenant paid a security deposit in the amount of \$500.00, which the landlord still holds.

Both parties confirmed a move-in inspection was done, but the landlord used a previous cleaning checklist that was used at the end of the previous tenancy. No move-out inspection was done at the end of the tenancy with the tenant, and the landlord completed the inspection alone, and left a copy of a cleaning checklist in the mailbox. The landlord testified that the tenant never returned her text messages, and she did not even know when the tenant left the home.

The tenant testified that the landlord had never arranged a move-out inspection with him, and he was away on vacation during the month of November before moving out. The tenant testified that the landlord left the checklist in the mailbox after he had already vacated the rental suite, and he had never received a copy.

The landlord is seeking a Monetary Order for damages and losses as outlined in the table below and in the landlord's Application:

Item	Amount
Professional Carpet Cleaning	\$151.20
Cleaning of Suite (2 hours)	50.00
Loss of rental income (1/2 month)	625.00
Filing Fee	100.00
Cost of Registered Mail for Application	21.42
Total Monetary Order Requested	\$947.62

The landlord testified that the carpets were approximately 15 years old, but the carpets were professionally cleaned at the end of each tenancy. The landlord testified that the tenant failed to professionally clean the carpets as required by the cleaning checklist. The tenant disputes this claim as the tenant feels the carpet was stained when he first moved in, and the landlord did not provide sufficient evidence to show that the carpets were cleaned at the beginning of the tenancy. The tenant also disputes the amount claimed, as the invoice shows that the landlord chose to add optional carpet protection for an additional \$65.00 before taxes. The cleaning portion was \$79.00 on the invoice.

The landlord is also seeking reimbursement for the cost of cleaning as she spent 2 hours cleaning the rental unit after the tenant vacated the home. The landlord is seeking reimbursement for cleaning as the landlord felt the tenant failed to properly clean the entire home, including the stove and windows and window sills.

The landlord is also seeking half a month's rent for loss of rental income. The landlord was able to re-rent the unit for January 2019 for \$1,250.00, and feels that she could have re-rented the home earlier if the tenant was more accommodating in allowing her to show the rental unit earlier, and if the home was in cleaner, more presentable condition.

The tenant disputed the landlord's monetary claim for damages, stating that he had left the home in the same condition as the date of move-in, with the exception of wear and tear. The tenant testified that the landlord had only communicated with him through text message, and she had never made any formal written requests to enter the rental unit.

Analysis

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. 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 or 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, on a balance of probabilities, that the tenant had caused damage and losses in the amounts claimed by the landlord.

Section 37(2)(a) of the *Act* stipulates 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. Both parties confirmed that the landlord had never completed any formal move-in or move-out inspection reports, nor were any ever provided to the tenant. The landlord testified that a cleaning checklist was completed and provided to the tenant at the beginning and end of the tenancy. The checklist was not signed by the tenant, and the tenant disputes having ever received a copy after the inspections. The tenant also disputes that the landlord had ever arranged a move-out inspection with him.

Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The

consequence of not abiding by these sections of the *Act* is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the *Act*.

Additionally, it was undisputed that at the end of the tenancy the carpet was at approximately 15 years old. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of carpet is ten years. I, therefore, find that at the end of the tenancy the carpet had exceeded its useful life of 10 years. I am also not satisfied that the landlord provided sufficient evidence to support that the tenant failed to leave the carpet in undamaged or clean condition. I find that the landlord also attempted to claim for optional services that she elected in order to add value to her next tenancy and home, rather than for losses suffered due to the tenant’s actions. This is a business decision on the landlord’s part, and not a monetary claim for losses due to the tenant’s noncompliance. Accordingly, I find that the landlord is not entitled to any compensation for losses associated with the carpet cleaning. The landlord’s monetary claim for carpet cleaning is also dismissed without leave to reapply.

The landlord made a monetary claim for cleaning, which she states she did herself. I am not satisfied that the landlord provided sufficient evidence to show that the tenant failed to leave the rental unit in unreasonably clean condition. I am also not satisfied that the landlord met the burden of proving the value of her loss. On this basis, I dismiss the landlord’s monetary claim for cleaning without leave to reapply.

The landlord also made a monetary claim of lost rental income. The landlord’s testimony was that due to the difficulty the landlord had in showing the rental unit, she was not able to rent the unit until January 2019. The tenant testified that the landlord never gave proper notice to enter the rental unit as required by the *Act*, and only communicated by way of text message.

Section 29 of the *Act* prohibits the landlord’s right to enter the rental suite except with proper notice or the tenant’s permission. The landlord’s right to enter a rental unit is restricted, and the landlords must not enter unless:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

I am not satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary losses as is required by section 7(2) of the *Act*. I find that the landlord did not provide sufficient evidence to show that she had made attempts to show the rental unit in compliance with the *Act*, and re-rent the unit as soon as possible. Furthermore, despite the month of vacancy, I find that the landlord was able to re-rent the unit for \$171.52 more per month than the previous tenancy. I am not satisfied that the landlord provided sufficient evidence to support her loss, or that any losses were associated with the tenant's failure to comply with the *Act* and tenancy agreement. On this basis, I dismiss the landlord's monetary claim for loss of rental income without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful with his claim, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee. As section 72 of the *Act* does not allow for the reimbursement of the costs associated with serving an Application, the landlord's monetary claim for registered mail is also dismissed without leave to reapply.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

As the landlord still holds the tenant's security deposit of \$500.00, I issue a Monetary Order in the tenant's favour for the return of his security deposit in full.

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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