



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for damage or loss under the Act;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For monetary compensation under the Act; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and Procedural matters

At the outset of the hearing the landlord stated they were not served with the tenant's application. The tenant stated it was sent by registered mail; however, they do not have the tracking information. As the landlord has not received the tenant's application and the tenant cannot provide me with confirmation of the Canada post tracking number, I cannot determine if the landlord was served in accordance with the Act. Therefore, I find it appropriate to dismiss the tenant's claim with leave to reapply.

The landlord did not provide a copy of their evidence to the tenant. The landlord was given the opportunity to withdraw their claim. However, the landlord wanted to proceed in the absent of their evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to a monetary order for loss of rent?

Background and Evidence

The tenancy started in February 2017. The parties agreed that they entered into a fixed term tenancy which began on August 1, 2018 and was to expire on March 1, 2019. Rent in the amount of \$3,200.00 was payable on the first of each month. The tenant paid a security deposit of \$1,600.00. The tenancy agreement had a vacate clause as the landlord was going to move into the property. However, neither party initial that portion of the agreement.

Due to unforeseen circumstances the landlord was no longer going to move in to the premises and gave the tenants the option to remain in the rental unit; however, the tenant had already entered into a new tenancy agreement for a different residence. The tenant vacated at the end of February 2019.

The parties agreed that no move-in or move-out condition inspection report was completed.

The landlord claims as follows:

a.	Damage carpets due to pet urine	\$4,400.00
b.	Loss of rent	\$3,300.00
c.	Filing fee	\$ 100.00
	Total claimed	\$7,800.00

The landlord testified that the carpets were damaged due to the tenant having five cats in the rental unit. The landlord stated that pets were not considered when the tenant's moved in. The landlord stated that the tenant asked permission during the tenancy to get a kitten, which they gave consent.

The landlord testified that when they inspected the rental unit at the end of the tenancy the carpets were wet, and the windows opened. The landlord stated that they could not detect the smell of urine until the carpets dried and there was urine stains. The landlord stated that they had to replace the carpet and the underlay. The landlord stated that the carpets were approximately 8 to 10 years old.

The tenant testified that the landlord knew prior to moving in that they had five cats. The tenant stated that there was some damage to the carpet; however, it was not from cat urine, as their cat had vomited on the carpet during the move. The tenant stated they gave the landlord

permission to keep the security deposit; however, do not agree to pay the full amount of the carpet as it is excessive.

The landlord testified that they would never agree to allow five cats to live in the rental unit. The landlord stated that if they had an agreement on pets at the start of the tenancy, they would have charged a pet damage deposit.

The landlord testified that since the tenant did not want to continue the tenancy, they had found a new renter; however, due to the cat urine smell they did not want to move in, and they lost one months rent in the amount of \$3,300.00.

The landlord testified that that they could not find a new renter and could not afford to lose rent, so they moved into the premises the last week of March 2019.

The tenant testified that they do not agree that the landlord is entitled to loss of rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

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

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I do not accept the evidence of the tenant that they had permission to have five cats prior to the tenancy. This is inconsistent with the tenancy agreement as it show the pet deposit was not applicable. This would support that pets were not contemplated by the parties.

I accept the evidence of the parties that the carpet was damaged, whether it was cat vomit or urine. Either way, the tenant is responsible for the damage that was caused by their pets.

In this case, the carpets were between 8 and 10 years old at the time of replacement, which would suggest the carpets were near the end of their useful lifespan of ten years as determined by the Residential Tenancy Policy Guideline #40.

The tenant gave the landlord permission to keep the security deposit of \$1,600.00. I find that amount is adequate compensation when factoring in the useful life span. Further, I cannot consider any documentary evidence submitted by the landlord as it was not provided to the tenant. Therefore, I find the landlord is entitled to keep the security deposit in full satisfaction of this portion of their claim.

The landlord is seeking one month's compensation as the new renter would not move into the rental unit due to the state of the carpets and the cat urine odor. However, as I have excluded the landlord's evidence as it was not served upon the tenant, I find the landlord has not met the burden of proof. Further, the landlord moved into the rental unit mitigating the loss. Therefore, I dismiss this portion of the landlord's claim.

As the landlord was given prior permission to keep the security deposit for damages to the carpet. I find the landlord is entitled to keep the security deposit in full satisfaction of the claim. I decline to award the cost of the filing fee as the balance of the landlord's claim was not successful.

Conclusion

The landlord is granted permission to keep the security deposit in full satisfaction of the claim.

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 21, 2020

Residential Tenancy Branch