



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRYDE AVENUE APARTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNRL-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, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The owner of the subject rental property and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The owner testified that he served the tenant with his application for dispute resolution via registered mail on October 16, 2019 and that the tenant received it on November 7, 2019. The owner entered into evidence a Canada Post receipt and tracking report to evidence the above mailing. The tenant testified that he received the landlord's application for dispute resolution on November 7, 2019. I find that the landlord's application for dispute resolution was served on the tenant in accordance with section 89 of the *Act*.

The owner testified that he served the tenant with his amendment via process server on January 22, 2020. An affidavit of service in support of the above testimony was entered into evidence. The tenant confirmed receipt of the landlord's amendment on January 22, 2020. I find that the landlord's amendment was served on the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 15, 2018 and ended on October 2, 2019. Monthly rent in the amount of \$948.00 was payable on the first day of each month. A security deposit of \$462.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree to the following facts. The tenant emailed the landlord's representative on August 31, 2019 and provided notice to end tenancy effective September 30, 2019. After some discussion, the tenant's notice to end tenancy was accepted by the landlord. The tenant did not move out until October 2, 2019.

The tenant testified that he moved out late because his car broke down.

Both parties agree that a move in condition inspection and inspection report were completed by an agent of the landlord and the tenant on May 15, 2018 and the move in condition inspection report was signed by both parties. A copy of the move in condition inspection report was entered into evidence. On the move in condition inspection report the tenant signed the statement "I agree that this report fairly represents the condition of the rental property".

The tenant testified that on the move out condition inspection report he authorized the landlord to retain all of his security deposit for the following repairs: carpet cleaning, professional cleaning, repair work and painting.

Both parties agree that a move out condition inspection and inspection report were completed by an agent of the landlord and the tenant on October 2, 2019 and the move out condition inspection report was signed by both parties. A copy of the move out condition inspection report was entered into evidence. On the move out condition inspection report the tenant signed the statement "I agree that this report fairly represents the condition of the rental property".

Flooring

The owner testified that the carpet in the living room and dining room was in good condition when the tenant moved in and had numerous burn marks when the tenant moved out. The move in condition inspection report states that the floor in the dining room is in good condition with one small burn mark. The move in condition inspection report states that the floor in the master bedroom is in fair condition with a burn at the door, indents and discoloration. The move out condition inspection report states that the floor in the living room has cigarette burns, many stains, and was not shampooed. The move out condition inspection report states that the floor in the master bedroom has cigarette burns and is stained.

The landlord entered into evidence photographs of the subject rental property taken when the tenant moved in and when he moved out. The photographs show that the carpets in the subject rental property were in fairly good condition when the tenant moved in and had numerous burn marks when the tenant moved out.

The tenant testified that he accidentally burned the carpets from candles and incense.

The owner testified that the carpet had to be replaced and that the carpet was approximately three years old when he purchased the property in May of 2016. The landlord entered into evidence a receipt for flooring material in the amount of \$1,234.99 and a receipt for the cost of labour to install the flooring in the amount of \$1,260.00. The receipts total \$2,494.99

Painting

The landlord testified that the subject rental property was freshly painted when the tenant moved in and required repainting when the tenant moved out because of extensive damage to the walls. The landlord testified that the walls were dirty and stained with human material.

The move in condition inspection report states the following about the walls in the subject rental property:

Kitchen	Fair condition, many small holes
Dining room	Good condition, a few nail holes
Living room	Good conditions, a few small holes
Bathroom	Good condition
Master bedroom	Good condition, a couple small holes

The move out condition inspection report states the following about the walls in the subject rental property:

Kitchen	Dirty
Dining room	Dirty, some dirt marks/ baseboards not washed
Living room	Dirty and damaged, stained in several places, damaged wall
Bathroom	Fair condition
Master bedroom	Good condition, dirty, minor stains in closet wall, scraped

The owner entered into evidence photographs of the subject rental property taken when the tenant moved in and when he moved out. The photographs show that the walls in the subject rental property were in good condition when the tenant moved in and were dirty and had scrapes, scratches and dents when the tenant moved out.

The owner testified that the walls needed to be repainted. The landlord entered into evidence a receipt for paint in the amount of \$246.56 and a receipt for the cost of labour in the amount of \$644.00. The receipts total \$890.56.

The tenant testified that he never washed the walls and that any dents or marks made were normal wear and tear.

Cleaning

The owner testified that the tenant did not clean the subject rental property when he moved out and that it was filthy. The owner testified that he did not believe the bathroom and kitchen had ever been cleaned by the tenant for the duration of the tenancy. The move in condition inspection report states that the entire subject rental property is clean. The move out condition inspection report states that every room in the subject rental property is dirty. The owner entered into evidence photographs showing dirty walls, carpets and kitchen.

The owner entered into evidence a receipt for a cleaning agent in the amount of \$29.80 which he testified he purchased to clean the kitchen and bathroom. The owner testified that approximately half of the cleaner was used on the subject rental property. The landlord testified that he hired a professional to clean the subject rental property, a receipt in the amount \$183.75 was entered into evidence.

The tenant testified that he vacuumed the subject rental property but did not clean it as in depth as he should have. The tenant testified that he put in some effort, but the kitchen needed more work.

October's Rent

The owner testified that the subject rental property was in such poor condition that it could not be rented out after the tenant moved out. The owner testified that the repairs to the subject rental property were not complete until November 11, 2019 and that a new renter was not obtained until January 1, 2020. The owner testified that before he saw the state of the unit, he had lined up a new tenant to move in on October 1, 2019 but did not follow through with the signing of a tenancy agreement with that new tenant because the unit was not move in ready. The owner testified that he is seeking October's rent in the amount of \$948.00 from the tenant.

Hearing Preparation Materials

The owner testified that he is seeking the tenant to reimburse him for the costs he incurred preparing for this hearing including the cost of printing photographs, photocopying, paper and glue. Receipts totaling \$96.90 were entered into evidence.

Analysis

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

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

Section 67 of the *Act* states that without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Flooring

Based on the testimony of both parties, the photographs and the condition inspection reports, I find that the carpets were in reasonably good condition when the tenant moved in and required replacement when the tenant moved out due to burn marks caused by the tenant.

Policy Guideline #40 states that the useful life for carpet is 10 years (120 months). The owner testified that the carpets were three years old when he purchased the building in May of 2016 making the carpets approximately 6.5 years old (78 months) when the tenant moved out. Therefore, at the time the tenant moved out, there was approximately 42 months of useful life that should have been left for the carpets of this unit. I find that since the unit required new carpet after only 78 months, the tenant is required to pay according to the following calculations:

$$\begin{aligned} &\$2,494.99 \text{ (cost of flooring and labour)} / 120 \text{ months (useful life of carpet)} = \\ &\$20.79 \text{ (monthly cost)} \end{aligned}$$

$$\begin{aligned} &\$20.79 \text{ (monthly cost)} * 42 \text{ months (expected useful life of carpet after tenant} \\ &\text{moved out)} = \mathbf{\$873.18} \end{aligned}$$

Painting

Based on the testimony of both parties, the photographs and the condition inspection reports, I find that the walls were in reasonably good condition when the tenant moved in and required painting and some patching when the tenant moved out. I find that the dirty walls, scuff and scrape marks went beyond reasonable wear and tear.

Policy Guideline #40 states that the useful life for interior painting is four years (48 months). The owner testified that the subject rental property was painted immediately prior to the tenant moving in making the paint approximately 16.5 months old when the tenant moved out. Therefore, at the time the tenant moved out, there was approximately 31.5 months of useful life that should have been left for the interior paint of this unit. I find that since the unit required repainting after only 16.5 months, the tenant is required to pay according to the following calculations:

$\$890.56 \text{ (cost of paint and labour)} / 48 \text{ months (useful life of paint)} = \18.55
(monthly cost)

$\$18.55 \text{ (monthly cost)} * 31.5 \text{ months (expected useful life of paint after tenant moved out)} = \mathbf{\$584.33}$

Cleaning

Based on the testimony of both parties, the photographs and the condition inspection reports, I find that the subject rental property required significant cleaning when the tenant moved out. I find that the landlord is entitled to recover the cost of the cleaner in the amount of \$183.75 and 50% of the cost of the cleaning agent, in the amount of \$14.90, as only half of the cleaning agent was used at the subject rental property.

October's Rent

Residential Tenancy Policy Guideline #3 states that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent.

Based on the testimony of the landlord and my above findings, I find that the tenant damaged the subject rental property. I find that the damage caused by the tenant was such that the subject rental property could not be rented out immediately after the

tenant vacated the subject rental property. I also find that the tenant did not move out in accordance with his notice to end tenancy, that being on September 30, 2019. I find that one month to complete the required repairs is reasonable and that the landlord is entitled to recover October's rent from the tenant in the amount of \$948.00.

Hearing Preparation Materials

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the Act. With the exception of compensation for filing the application, the Act does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I dismiss the landlord's claim for all costs associated with preparing for and participating in this hearing.

Filing Fee

As the landlord was successful in this application for dispute resolution, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Security Deposit

Section 38(4)(a) of the *Act* states that landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

Based on the testimony of both parties and the move out condition inspection report, I find that the tenant authorized the landlord, in writing, to retain his entire security deposit. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$462.50.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Flooring	\$873.18
Painting	\$584.33
Cleaning	\$183.75
Cleaning agent	\$14.90
October's rent	\$948.00
Filing Fee	\$100.00
Less security deposit	-\$462.50
TOTAL	\$2,241.66

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. 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: February 10, 2020

Residential Tenancy Branch