



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-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 tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:48 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The agent testified that the tenants were each served with the landlord's application for dispute resolution via registered mail on October 4, 2019. Canada Post receipts and tracking numbers were entered into evidence to confirm the above registered mailings. I find that the tenants were served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

Preliminary Issue- Failure to Amend

The landlord's application for dispute resolution made on October 1, 2019 sought monetary compensation in the amount of \$3,000.00.

The landlord uploaded a monetary worksheet on January 13, 2019 seeking \$7,259.71 in damages. The landlord did not file an amendment to increase the monetary claim. The monetary worksheet added additional claims for garbage removal, plumbing, dishwasher replacement and yard restoration. I informed the agent in the hearing that since the landlord did not file an amendment and the tenants did not have proper notice that the landlord's claim had more than doubled, I would not hear the landlord's extended claim. The landlord has leave to reapply for the portion of the claim not heard in today's hearing.

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 tenants' security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of her 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.

The agent provided the following undisputed testimony. This tenancy began on July 1, 2016 and ended on or around September 17, 2019. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that the tenants provided their forwarding address and notice to end the tenancy on August 19, 2019. The effective date of the notice to end tenancy was September 31, 2019. The agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") was posted on the tenants' door on September 6, 2019. An illegible copy of the 10 Day Notice was entered into evidence. A witnessed proof of service document for the 10 Day Notice was entered into evidence. The agent made no submissions regarding an amount of rent owed by the tenants to the landlord and unpaid rent was not on the landlord's monetary worksheet.

The agent testified that the tenants were provided with a Notice of Inspection on September 11, 2019 for entry on September 17, 2019. The agent testified that the subject rental property was found to be abandoned when it was inspected on September 17, 2019.

The agent testified that she does not know if a move in condition inspection report was conducted as she was not the agent for the landlord when this tenancy began and was not provided with a copy of the report. No move in or move out condition inspection reports were entered into evidence.

The agent testified that the subject rental property was left in a filthy condition with garbage strewn throughout. Photographs confirming the agent's testimony were entered into evidence. The agent testified that a professional cleaner was hired to clean the subject rental property. A receipt in the amount of \$911.40 was entered into evidence.

The agent testified that the carpets at the subject rental property were not cleaned when the tenants left and were filthy. Photographs of dirty carpets were entered into evidence. A carpet cleaning receipt in the amount of \$378.00 was entered into evidence.

The agent testified that the subject rental property was not locked when she attended on September 17, 2019 and the tenants did not return their keys. The agent testified that she immediately called a locksmith to replace the locks so the subject rental property could be secured. A receipt for the locksmith service was entered into evidence in the amount of \$278.25. The agent testified that the cleaner found the keys in a pile of garbage while cleaning; however, the locks had already been changed at that point in time.

The agent testified that the living room and dining room floor in the subject rental property were approximately six months old when the tenants moved in and were in perfect condition. The agent testified that the tenants rubbed the finish off of several

areas of the living room and dining room floor. Photographs of damaged flooring were entered into evidence. The agent testified that the flooring in the living room and dining room needed to be replaced. A receipt for flooring in the amount of \$1,324.41 was entered into evidence.

Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the landlord must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Cleaning

Section 37(2)(a) 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.

Residential Tenancy Policy Guideline #1 states that at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Based on the photographic evidence and the agent's testimony, I find that the rental unit required significant cleaning after the tenants vacated. I find that the failure of the tenants to clean the subject rental property constitutes a breach of section 37(2)(a) of the *Act*. This failure required the landlord to incur cleaning and carpet cleaning expenses totaling \$1,289.40. I find that the landlord acted reasonably in hiring professionals to clean the subject rental property. I find that the tenants are responsible for these cleaning fees.

Locks

Section 37(2)(b) of the *Act* states that when a tenant vacates a rental unit, the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the agent's testimony I find that the tenants did not return their keys to the landlord or the landlord's agent when they moved out, contrary to section 37(2)(b) of the *Act*. Leaving the keys in a pile of garbage in the subject rental property does not constitute returning the keys to the landlord. I find that the failure of the tenants to return their keys required the landlord to incur locksmith charges totaling \$278.25. I find that the agent acted reasonably in hiring a locksmith to secure the property as the tenants left it unlocked and without a means of securing it. I find that the tenants are responsible for the locksmith fee.

Flooring

Section 37(2)(a) 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.

The agent provided undisputed testimony that the dining room and living room floor were approximately six months old and in excellent condition when the tenants moved in. I accept the agent's undisputed testimony. The agent entered into evidence photographs showing that the living room/dining room flooring was damaged at the end of the tenancy. Based on the agent's testimony and evidence, I find that the tenants damaged the floor in the subject rental property, contrary to section 37(2)(a) of the *Act*. I find that the damage is greater than that to be expected due to regular wear and tear.

Policy Guideline #40 states that the useful life for flooring is 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately 75 months of useful life that should have been left for the flooring of this unit. I find that since the unit required new flooring after only 45 months, the tenants are required to pay according to the following calculations:

$$\begin{aligned} & \$1324.41 \text{ (cost of new flooring)} / 120 \text{ months (useful life of flooring)} = \$11.04 \\ & \text{(monthly cost)} \end{aligned}$$

\$11.04 (monthly cost) * 75 months (expected useful life of flooring after tenants moved out) = **\$828.00**

Unpaid Rent

While the landlord's application for dispute resolution states that the landlord is seeking money for unpaid rent, that claim was not pursued in the hearing and was not included in the landlord's monetary worksheet. Based on the above, I find that the landlord abandoned her claim for a monetary order for unpaid rent. I therefore dismiss the landlord's claim for unpaid rent, with leave to reapply.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$750.00 in part satisfaction of her monetary claim.

Filing Fee

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

Conclusion

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

Item	Amount
Cleaning	\$911.40
Carpet cleaning	\$378.00
Locks	\$278.25
Flooring	\$828.00
Filing Fee	\$100.00
Less security deposit	-\$750.00
TOTAL	\$1,745.65

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. 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: February 04, 2020

Residential Tenancy Branch