



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTEND RENTAL SOLUTIONS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDL-S, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 01, 2019 (the "Application"). The Landlord applied for compensation for damage to the unit, to recover unpaid rent, to keep the security deposit and for reimbursement for the filing fee.

The Agent appeared at the hearing for the Landlord. The Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenants confirmed they received the hearing package and Landlord's evidence.

The Agent testified that she had not received the Tenant's evidence. The Agent took issue with admissibility of the Tenant's evidence. The Agent explained that she was not at her address and had not been there since October 15, 2019. The Agent testified that she told the Tenants this. The Agent said she did not give the Tenants an alternative address to serve. The Agent testified that she emailed her materials to the Tenants October 10, 2019. The Agent said the Tenants served their evidence late and her roommate got it January 24 or 25, 2020. The Agent acknowledged that her roommate could have forwarded the evidence on to her but said she did not bother asking her roommate to do so because she would not have had time to reply to the evidence in writing.

Tenant H.S. testified that she dropped the evidence in the mailbox at the Landlord's address for service on the Application on January 23, 2020.

I asked the Agent if she was seeking an adjournment due to the late service of evidence. The Agent said she was not seeking an adjournment.

Evidence must be served in accordance with section 88 of the *Residential Tenancy Act* (the “Act”). I find that the Tenants did serve their evidence in accordance with section 88(f) of the Act which states:

88 All documents...that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

I accept Tenant H.S.’s testimony that she put the evidence in the mailbox January 23, 2020 as the Agent did not dispute this and the Agent’s testimony that her roommate received the evidence January 24 or 25, 2020 accords with this. Pursuant to section 90(d) of the Act, the Landlord is deemed to have received the evidence January 26, 2020.

Rule 3.15 of the Rules of Procedure (the “Rules”) required the Tenants to serve their evidence on the Landlord not less than seven days before the hearing. I find the Tenants did so.

I acknowledge that the Tenants should not have waited until the very last day permitted to serve their evidence. The Tenants testified that they received the Landlord’s materials October 10, 2019. Tenant H.S. provided a number of reasons as to why the evidence was served late. I did not find any of the reasons provided to be valid reasons for serving the evidence late. If the evidence had not been served in accordance with the Rules, I would have excluded it. Further, if the Agent had sought an adjournment, I would likely have granted one. However, the evidence was served in accordance with the Rules and the Agent did not seek an adjournment.

Further, I find that part of the reason the Agent did not have the evidence prior to the hearing was because she chose not to have her roommate send it to her. The Agent acknowledged that she could have done this. The Agent said she did not because she did not have time to reply in writing. However, this is not the point. The point is that the Agent could have had the evidence prior to the hearing and had a chance to reply to it verbally at the hearing.

In the circumstances, I find the Tenants complied with the *Act* and Rules and therefore the evidence is admissible.

The parties were given an opportunity to present relevant evidence and make relevant submissions. Pursuant to rule 7.4 of the Rules, I told the parties I would only consider evidence they pointed to during the hearing. I have considered all testimony provided and reviewed the documentary evidence pointed to during the hearing. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	August rent	\$2,380.00
2	September rent	\$2,320.00
3	Garbage disposal	\$500.00
4	Carpet change and reinstall	\$4,320.75
5	Carpet wash	\$250.00
6	General cleaning	\$100.00
	TOTAL	\$9,870.75

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started September 01, 2018 and was for a fixed term ending August 31, 2019. Rent was \$2,350.00 per month due on the last day of each month. The Tenants paid a \$1,175.00 security deposit.

The Agent testified that the Tenants did not pay August rent and were served with a 10 Day Notice on August 01, 2019. The Agent testified that the Tenants vacated the rental unit between August 10 and 15, 2019.

The Tenants agreed they were served with a 10 Day Notice on August 01, 2019. The Tenants testified that they vacated the rental unit by August 10, 2019.

The parties agreed the Tenants did not provide the Landlord a forwarding address. The Tenants said they were fine with losing their security deposit. At the hearing, the Tenants confirmed the Landlord can keep the security deposit to cover \$500.00 for garbage disposal and \$100.00 for general cleaning. The Tenants agreed the remainder of the security deposit (\$575.00) could be put towards unpaid rent.

A Condition Inspection Report (CIR) was submitted. The parties agreed they did a move-in inspection August 31, 2018 and completed and signed the CIR.

The parties disagreed about whether the rental unit was empty when the move-in inspection was done. The Agent testified that it was. The Tenants testified that they had moved some items into the rental unit already. The Tenants testified that they did not take issue with the timing of the move-in inspection.

The parties agreed no move-out inspection was done. The Agent testified that the Tenants were nowhere to be found at the end of the tenancy. The Agent acknowledged that the Tenants were served a 10 Day Notice and that a move-out inspection could have been arranged between service of the 10 Day Notice and the Tenants vacating. The Agent acknowledged she knew the Tenants were vacating. The Tenants testified that they were not given two opportunities to do a move-out inspection.

August rent

The Agent testified as follows. The tenancy did not expire until the end of August. August rent was due July 31, 2019 pursuant to the tenancy agreement. The Tenants did not pay August rent and were served the 10 Day Notice on August 01, 2019. The 10 Day Notice was effective August 10, 2019. The Tenants did not dispute the 10 Day Notice and vacated the rental unit. The Landlord tried to re-rent the unit but had a hard time due to the condition of the rental unit.

The Agent referred to screen shots submitted showing that the Landlord tried to re-rent the unit.

Tenant H.S. agreed August rent was due July 31, 2019. She agreed the Tenants did not pay August rent. Tenant H.S. explained that August rent was not paid because of a bug issue in the rental unit. She referred to text messages in evidence about the bug issue.

I listed the six reasons tenants can withhold rent under the *Act* and asked the Tenants if any of these six reasons applied. Tenant H.S. testified that none of the six reasons outlined applied.

September rent

The Agent testified as follows. Tenant H.S. sublet to someone with three dogs during the tenancy. She realised there were three dogs living in the rental unit when the Landlord took possession of it. Tenant H.S. did not have permission to sublet to someone with three dogs. She realised the carpet was ruined. The carpet was stained and smelled. She had someone attend mid August to wash the carpet; however, the stains and smell did not come out. The carpet was removed and replaced around August 25, 2019. She was not able to find someone to rent the unit earlier because of the condition of the unit. A lot of potential tenants said they were not interested in the unit. Statements from the upstairs tenant and a potential tenant in relation to the condition of the rental unit have been submitted.

The Agent further testified as follows. The unit was posted for rent on two rental websites and another website around August 10, 2019. She received many messages about it. She showed the unit often. She talked to a lot of people about the unit. Nobody wanted to rent the unit until the carpet was changed. The unit was posted for \$2,350.00 and then decreased to \$2,150.00. The unit was re-rented for October 01, 2019.

The Agent referred to the following evidence. Documentation about posting the unit for rent. Receipts for carpet cleaning as well as removing and replacing the carpet.

Tenant H.S. testified as follows. The Landlord had three weeks to clean and rent the unit for September 01, 2019. She believes the unit could not be re-rented because it was not clean in general. It was not clean when the Tenants moved in or when they moved out. There was black mold growing throughout the unit. This would have affected the carpet. The carpet was in disrepair when the Tenants moved in. The carpet got worse throughout the tenancy due to reasonable wear and tear. The carpet

was old and very thin. The Tenants and their roommates never owned dogs and did not have dogs in the rental unit.

The Tenants referred to the following evidence. Photos submitted of black mold. Witness statements.

In reply, the Agent testified that it was the Tenants' who caused the mold in the rental unit. She also testified that the carpet cleaning and repair took time.

In reply, Tenant H.S. denied that the Tenants caused the mold.

Carpet wash, change and reinstall

The Agent testified as follows. She hired someone to wash the carpet. Washing the carpet did not take out the stains or smell. She then hired someone to have the carpet removed and replaced. All of this had to be done because of the condition the Tenants left the carpet in.

The Agent did not know how old the carpet was. She acknowledged it was not new.

The Agent referred to a statement from the upstairs tenant, statement of the prospective tenant and photos of the carpet.

Tenant H.S. testified as follows. The carpets were disgusting and damaged on move-in and should have been changed. The Tenants were constantly vacuuming. The photos submitted show the carpet at move-in and show that the carpet in the hall was not in good condition. There were no dogs in the rental unit. The carpet was over 10 to 12 years old and had not been taken care of.

The Tenants testified that they did not have a good relationship with the upstairs tenant and submitted that the upstairs tenant would be inclined to give a false statement about them.

Analysis

Security Deposit

The Tenants agreed to the Landlord keeping the security deposit for garbage disposal, general cleaning and unpaid rent. Therefore, the Landlord can keep the security

deposit and I have not considered the request for compensation for garbage disposal or general cleaning.

Compensation

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

August rent

Section 26(1) of the *Act* states:

26 (1) 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.

Pursuant to the written tenancy agreement, the Tenants were required to pay \$2,350.00 per month in rent by the last day of each month. The parties agreed rent for August was due July 31, 2019.

The Tenants were not entitled to withhold rent because of a bug issue in the rental unit. The *Act* does not allow for this.

The *Act* sets out five reasons tenants can withhold rent in sections 19, 33, 43, 51 and 65. Further, tenants can withhold rent when the landlord allows them to do so. Tenant H.S. confirmed that none of these six reasons for withholding rent applied. Therefore, I find the Tenants did not have authority under the *Act* to withhold rent.

There is no issue that the Tenants did not pay August rent. I find the Tenants owe the Landlord for August rent.

I am satisfied the Tenants vacated the rental unit by August 10, 2019 given the Tenants' testimony on this point and given the Agent did not know what date the Tenants vacated. However, I find the Tenants are required to pay all of August rent. There is no issue that the tenancy agreement was for a fixed term ending August 31, 2019. I find the Tenants breached the *Act* by not paying August rent and therefore incurred the 10 Day Notice. I find the Landlord lost all of August rent which otherwise would have been paid pursuant to the fixed term tenancy agreement. Based on the testimony of the Agent and screen shots submitted, I am satisfied the Landlord attempted to re-rent the unit starting in early August. I find the Landlord mitigated the loss in relation to August rent.

The Landlord is awarded \$2,350.00 for August rent. The \$575.00 remaining from the security deposit can be put towards this amount.

Carpet wash, change and reinstall

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Section 21 of the *Residential Tenancy Regulation* states:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The move-in CIR shows that part of the carpet by the kitchen was snagged and that the carpet in the second bedroom was stained and in fair condition on move-in.

I make the following findings about the carpet issue.

The photos submitted by the Landlord show the carpet was in bad condition at the end of the tenancy.

I accept based on the signed letter from T.M. that the Tenants had three dogs living in the rental unit for over a month during the tenancy. I do not accept that this is a false statement in the absence of further evidence to support that it is a false statement.

In relation to the witness statements of A.S., D.C. and M.M. submitted by the Tenants, I do not find these to be strong evidence to support the Tenants' testimony about the state of the carpets prior to them moving in as all three witnesses attended the rental unit after the Tenants had already moved in and were living in the rental unit.

I do not accept the statements of the Tenants about the condition of the carpet on move-in. If the carpets were disgusting and in poor condition, this should have been reflected on the move-in CIR. Further, the photos submitted by the Tenants do show some damage to the hallway carpet but do not support the position that other areas of the carpet were disgusting and in poor condition.

I do not accept the suggestion that mold in the rental unit caused the damage to the carpet in the absence of further evidence to support this position.

Overall, I rely on the move-in CIR and photos submitted by the Landlord and Tenants and am satisfied the carpets were in worse condition on move-out than they were on move-in.

Based on the photos submitted by the Landlord, I am satisfied the damage was beyond reasonable wear and tear. I am also satisfied the Tenants did not clean the rental unit or carpet upon move-out. The photos submitted by the Landlord show the carpet was dirty and that the Tenants left items in the rental unit. Further, Tenant H.S. stated that the rental unit was not clean on move-in or upon move-out. I note that the Tenants were responsible pursuant to section 37 of the *Act* for leaving the rental unit reasonably clean regardless of how clean it was on move-in.

I am satisfied the Tenants breached section 37 of the *Act* in relation to the carpet.

Based on the photos, I find it reasonable that the Landlord hired someone to clean the carpet. Based on the invoice submitted, I accept that the carpet cleaning cost \$250.00. I am satisfied this is a reasonable amount. I award the Landlord this amount.

Based on the testimony of the Agent and statement of K.K. and B.K. submitted by the Landlord, I am satisfied that prospective tenants took issue with the state of the carpet. Based on the photos submitted by the Landlord, I am satisfied it was reasonable for the Landlord to replace the carpet.

Based on the receipt submitted, I accept that the cost of the carpet replacement was \$4,320.75.

However, I am not satisfied the Landlord is entitled to compensation for the full \$4,320.75 for two reasons.

First, the receipt submitted lacks sufficient detail to establish that the Landlord is entitled to \$4,320.75. I find this amount significant. The receipt submitted does not break down the cost of removing the carpet, disposing of the carpet and installing the new carpet. It does not break down the cost of labour versus materials. It does not show how many hours of work is involved or the cost of labour per hour. It does not show how many square feet of new carpet is required or the price per square foot. The lack of detail on the receipt makes it such that I cannot determine whether the amount sought is

reasonable. The Landlord did not submit other evidence to demonstrate that the amount sought is reasonable.

Second, I am not satisfied the Tenants are required to compensate the Landlord for the cost of brand new carpet. Policy Guideline 40 outlines the useful life of items. It states that the useful life of carpet is 10 years. Tenant H.S. took the position that the carpet was 10 to 12 years old. The photos tend to support that the rental unit and carpet were on the older side. The Agent did not know how old the carpet was. I would expect a landlord to obtain such information or evidence prior to a hearing where they are seeking compensation for brand new carpet.

This is the Landlord's application and the Landlord has the onus to prove they are entitled to the compensation sought. The Landlord has failed to prove they are entitled to \$4,320.75 for the carpet. In the absence of evidence about the age of the carpet, I cannot be satisfied that the carpet was not 10 years old, or close to 10 years old. In the circumstances, I award the Landlord \$150.00 in nominal damages as the Landlord has failed to prove significant loss.

September rent

Policy Guideline 3 states:

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. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

As stated above, I am satisfied of the following. The Tenants vacated the rental unit by August 10, 2019. The Tenants breached section 37 of the *Act* by leaving the carpet dirty and damaged. The Landlord attempted to re-rent the unit starting in early August. Prospective tenants took issue with the state of the carpet. It was reasonable for the Landlord to change the carpet.

I note that the invoice for carpet cleaning shows this was not done until September 13, 2019.

I acknowledge that the receipt for removal and replacement of the carpet is dated August 25, 2019. However, I note from the details that this is a quote and not an actual receipt for monies paid or an invoice for work done.

Based on the photos submitted by the Landlord, I find it would have been reasonable for the Landlord to know that the carpet needed to be cleaned and possibly replaced. I am not satisfied based on the evidence provided that the Landlord took steps to have the carpet cleaned and replaced in a timely manner. I am not satisfied based on the evidence provided that this could not have been done sooner. I am not satisfied the Landlord has proven they are entitled to compensation for September rent.

In summary, the Landlord is entitled to the following compensation:

Item	Description	Amount
1	August rent	\$2,350.00
2	September rent	-
3	Garbage disposal	\$500.00
4	Carpet change and reinstall	\$150.00
5	Carpet wash	\$250.00
6	General cleaning	\$100.00
	TOTAL	\$3,350.00

Given the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$3,450.00. The Landlord can keep the \$1,175.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$2,275.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$3,450.00. The Landlord can keep the security deposit. The Landlord is issued a Monetary Order for the remaining \$2,275.00. This Order must be served on the Tenants as soon as possible. If the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 12, 2020

Residential Tenancy Branch