



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDT**

Introduction

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

- a monetary order for damage to the rental unit in the amount of \$1,889.50 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:50 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's property portfolio manager (“**JS**”) 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 JS and I were the only ones who had called into this teleconference.

JS testified that the tenant was served the notice of dispute resolution form and supporting evidence package via registered mail on December 17, 2019. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. JS testified that these documents were sent to the tenant's forwarding address that the landlord obtained from the Income Assistance Office on October 24, 2019. Based on the testimony of JS, I find that the tenant resides at the forwarding address the documents were sent to, and that the tenant is deemed served with these documents on December 22, 2019, five days after the landlord mailed them, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$1,889.50; and
- 2) recover its filing fee from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of JS' submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, month to month tenancy agreement starting January 24, 2017. Monthly rent is \$1,149 and is payable on the first of each month. The tenant did not pay any security deposit to the landlord.

JS testified the tenant vacated the rental unit on or before March 23, 2019. She testified that an agent of the landlord attended the rental unit on that date and discovered that the tenant had abandoned the rental unit. The tenant had removed all the dishes, foodstuffs, toiletries and clothes, but left a chair, couch, mattress, box spring, dresser, and miscellaneous debris in the rental unit. In an email to the property manager dated March 23, 2019, the landlord's agent wrote that "it was difficult to be in the [rental unit] as the smell of urine is extremely strong."

The landlord submitted photos of the rental unit into evidence which show a mostly empty unit, with some personal items strewn about the floor and left in cabinets, and several items of furniture.

The landlord claims for \$1,889.50, representing the following:

Debris Removal	\$450.00
Seal Coat and Paint Rental Unit	\$1,439.50
Total	\$1,889.50

JS testified that the landlord hired a janitorial service to remove the items and furniture left in the rental unit by the tenant. She testified that this cost the landlord \$450. She submitted an invoice for \$735 from the janitorial company, of which JS testified \$450 related to the removal of debris from the rental unit.

JS testified that the landlords had to remove much of the carpet in the rental unit to eliminate the urine smell. She testified that the landlord made a prior application to the Residential Tenancy Branch to recover costs connected with the carpet removal and was successful (file number 31040613).

JS testified that, once the carpet was removed, the landlord had to apply a “seal coat” to the subfloor to prevent the urine smell from lingering in the rental unit. She testified that this cost the landlord \$600. She provided an invoice from a painting company containing a line item for seal coating the floors of the rental unit costing \$600.

JS testified that at the end of the tenancy the landlord repainted the rental unit. She testified that it was previously painted “right before the tenant moved in” to the rental unit. JS testified that the tenant did not cause any damage to the rental unit’s interior paint (else she would have recorded it and claimed for the damage to the walls). She testified that it cost the landlord \$3,358 to repaint the rental unit, but that the landlord was only claiming for 25% of this (\$839.50). She testified that the landlord claimed this reduced amount to account for ordinary wear and tear to the paint and for to acknowledge the fact that the rental unit’s interior paint was partially through its useful life.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

Section 37 of the Act states:

Leaving the rental unit at the end of a tenancy

37(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

So, the landlord must prove that the tenant breached section 37(2) of the Act, that the landlord suffered a quantifiable loss, and that the landlord acted reasonably to minimize its damages.

1. Rubbish Disposal

Based on the testimony of JS and the documentary evidence provided by the landlord, I find that the tenant did not leave the rental unit “reasonably clean” as required by section 37(2) of the Act. I find that he left personal items and furniture in the rental unit. I accept JS’s testimony that the landlord hired a janitorial service to attend the rental unit and remove the items left in the rental unit by the tenant. I find that, in light of the type and quantity of personal items left in the rental unit, \$450 is a reasonable amount to pay for this service. As such, I find that the tenant must pay the landlord \$450.

2. Seal Coat

I accept JS’s evidence that the rental unit smelled strongly of urine at the end of that tenancy. I find that this was caused by the tenant. I find that this smell constitutes damage to the rental unit, and that the tenant did not repair this damage. As such, I find that the tenant breached section 37(2) of the Act. I find that the landlord incurred \$600 in damages connected with applying a seal coat to the subfloor of the rental unit. Based on the testimony of JS, I find that this was reasonably necessary to eliminate the urine smell from the rental unit. Accordingly, the tenant must compensate the landlord this amount.

3. Paint

Policy Guideline 1 states:

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the

premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

JS testified that the tenant did not cause any damage to the interior paint of the rental unit. As such, per Policy Guideline 1, the landlord is not entitled to recover any costs incurred repainting the rental unit.

4. Filing Fee

As the landlord has been substantially successful in its application, it may recover its filing fee from the tenant.

Conclusion

I order that the tenant pay the landlord \$1,150, representing the following:

Debris Removal	\$450
Seal Coat	\$600
Filing Fee	\$100
Total	\$1,150

I order that the landlord serve the tenant a copy of this decision and accompanying order as soon as possible following its receipt.

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 18, 2020

Residential Tenancy Branch