



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent and compensation for damage and loss under the Act, the Regulation or tenancy agreement pursuant to section 67 of the Act;
- authorization to retain the tenant's security deposit under Section 38 of the Act; and
- authorization to recover the filing fee for this application, pursuant to section 72.

I left the teleconference connection open until 1:57 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord and his witness CA attended the hearing and were 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 landlord, his witness and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the notice of hearing and evidence (the Materials) by registered mail on December 04, 2019 in accordance with section 89(1)(d) of the Act (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find the tenant is deemed to have received the Materials on December 09, 2019.

Issues to be Decided

Is the landlord entitled to:

1. retain the security deposit and receive a monetary award for compensation for unpaid rent and damage caused by the tenant?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is his obligation to present the evidence to substantiate his application.

The landlord testified the tenancy started on November 01, 2018 and ended on November 13, 2019. Monthly rent was \$896.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$437.50 was collected and the landlord still holds it in trust. The tenancy agreement was submitted into evidence.

The landlord received a notice to end monthly tenancy from the tenant on October 23, 2019. The notice, submitted into evidence, indicates the tenant will move out on November 30, 2019. The rent for November 2019 was not paid.

A move-in and move-out condition inspection form (the "form"), signed by the landlord and the tenant on November 01, 2018 and November 13, 2019, was produced into evidence. The form indicates in the 'security deposit statement' a carpet cleaning fee of \$25.00 and security deposit of \$437.50. The landlord affirmed that all the other amounts filled in the security deposit statement box of the form were filled after the tenant signed it.

The tenancy agreement submitted into evidence states:

CLAUSE 23 CARPETS AND WINDOWS COVERINGS. The tenant is responsible for periodic cleaning of carpets and window coverings provide by the landlord. While professional cleaning is recommended at all times, if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy.

The landlord affirmed the carpet was clean at the start of the tenancy and dirty at the end of the tenancy. The move-out inspection form indicates the carpet in the living room was worn upon the end of the tenancy.

The landlord affirmed the rental unit was re-rented on November 15, 2020. The landlord received \$493.30 for the rent from November 15 to 30, 2020 from the new tenant.

A monetary order worksheet was presented into evidence. It mentions a balance of \$402.70 for November's rent and \$25.00 for the carpet cleaning, totaling \$427.70.

Analysis

Sections 7 and 67 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 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.

Residential Tenancy Branch 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The testimony provided by the landlord during the hearing was cohesive and convincing.

Unpaid rent

The landlord affirmed the monthly rent was \$896.00 upon the end of the tenancy, due on the first day of the month. The landlord testified the tenant served the notice to end monthly tenancy on October 23, 2019, moved-out on November 13, 2019 and did not pay rent for November 2019.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act. Pursuant to section 26(1) of the Act, I find that the tenant was obligated to pay the monthly rent in the amount of \$896.00 on the first day of each month.

The landlord affirmed he was able to re-rent the rental unit on November 15, 2020 and received \$493.30 for the month of November.

Based on the testimony of the landlord and the monetary order worksheet, I find the tenant did not pay rent in accordance with section 26(1) of the Act and owes the landlord \$402.70 for the balance of November 2019.

Carpet cleaning

Section 37(2) 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

Residential Tenancy Branch Policy Guideline 1 states:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, 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. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

Based on the testimony, I find the tenant did not leave the rental unit's carpet clean at the end of the tenancy that lasted over one year. The inspection form was signed but by the tenant authorizing the landlord to discount \$25.00 from the security deposit for carpet cleaning. I find the landlord had a loss of \$25.00 for cleaning the rental unit's carpet.

As such, I award the landlord \$25.00 in compensation for this loss.

I find the landlord received the tenant's forwarding address on November 13, 2019 and filed this application on November 25, 2019, within the day timeframe of Section 38(1)(d) of the Act.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the tenants' security deposit of \$437.50 in partial satisfaction of the monetary losses incurred in this tenancy.

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

In summary:

Unpaid rent (balance of November 2019)	\$402.70
Carpet cleaning	\$25.00
Filing fee	\$100.00
Subtotal	\$527.70
Minus deposit	\$437.50
Total monetary award	\$90.20

Conclusion

Pursuant to sections 67 and 72 of the Act, I authorize the landlord to retain the tenant's security deposit of \$437.50 in partial satisfaction of losses incurred and grant the landlord a monetary order in the amount of **\$90.20**.

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: April 29, 2020

Residential Tenancy Branch