



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision. The tenant was represented by her son.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss and damages arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenancy began on April 1, 2012. The tenant paid a security deposit of \$480.00 which the landlord still holds in trust. The monthly rent of \$1040.00 was due on the first of each month. The

landlord testified that he took possession of the property on October 31, 2017. The landlord testified that on December 9, 2019 the tenant advised him that they would be vacating by the end of the month even though the parties had signed a mutual agreement to end the tenancy for February 29, 2020. The landlord testified that due to the short notice and the urine soaked carpet, he was unable to rent the unit for January 1, 2020. The landlord testified that he is seeking a loss of revenue the amount of \$1040.00.

The landlord testified that he is also seeking \$3643.33 for the cost of replacing the urine soaked carpet. The landlord testified that he purchased the most economical type of vinyl flooring to replace the damaged carpet. The landlord testified that he never received written notice that the tenants were going to move, and that the tenant's son changed the move out date without consulting with him. The landlord also seeks the \$100.00 filing fee for this application. The landlord seeks a monetary order of \$4683.33.

The tenants gave the following testimony. AR testified that he sent the landlord a text message on November 8, 2019 advising that his mother would be moving out. AR testified that his mother later provided the landlord with written notice. AR testified that as proper notice was given the landlord should not be entitled to the loss of revenue. AR testified that the carpets were already in poor condition when his mother moved into the unit and were most likely the original carpets. AR testified that the landlord locked out his mother on December 15, 2019 and was not given an opportunity to paint or clean the carpets. AR testified that since they were not given a chance to mitigate damages, the landlord should not be entitled to this claim either. ER testified that the landlord was not being truthful.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Loss of Revenue – \$1040.00

Section 45 of the Act, addresses the issue before me as follows.

Tenant's notice

45 (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a)is not earlier than one month after the date the landlord receives the notice, and
- (b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4)A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

The tenant has not provided sufficient evidence to show that notice was given on November 8, 2019 as alleged. In addition, the tenant did not dispute the fact that the parties had signed a Mutual Agreement to End the Tenancy for February 29, 2020. Based on all of the above I am satisfied that the tenant did not provide proper notice to end the tenancy as required and was in breach of section 45. Furthermore, I accept that the landlord was given very short notice and the timing before Christmas made it difficult for him to re-rent the unit, accordingly; I find that the landlord is entitled to \$1040.00 for loss of revenue for the month of January 2020.

Replacement of carpets - \$3643.33

Residential Tenancy Policy Guideline 40 addresses the “useful life” of building elements. Carpets are listed as having a useful life of 10 years. The landlord testified that the property was built in 1996 and didn’t know how old the carpets were. In addition, the move in condition inspection report from 2012 reflected that the carpet already had stains on them eight years ago.

As the landlord is unable to provide the age of the carpets and as it is reasonable to conclude that they would have some additional wear and tear over eight years with a dog living in the unit, I dismiss this portion of the landlords claim as I find that he has not provided sufficient evidence to satisfy the four factors listed above under section 67 and unable to answer the issue of whether the carpets have already far exceeded their useful life. I dismiss this portion of the landlords claim.

As the landlord has been partially successful in this application, he is entitled to the recovery of the \$100.00 filing fee along with the \$1040.00 I have granted him for a total award of \$1140.00.

Conclusion

The landlord has established a claim for \$1140.00. I order that the landlord retain the \$480.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$660.00. This order may be filed in the Small Claims 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: May 11, 2020

Residential Tenancy Branch