



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax City Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes 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 damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the tenant 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 landlord's agent and I were the only ones who had called into this teleconference.

The agent testified that the tenant was served with the landlord's application for dispute resolution via registered mail on April 9, 2020. The agent provided the Canada Post tracking number in the hearing. The tracking number is located on the cover page of this decision. The Canada Post tracking website confirmed that the above package was mailed on April 9, 2020 and delivered on April 14, 2020. I find that the tenant was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?

2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, 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 landlord's agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on July 1, 2014 and ended on March 31, 2020. Monthly rent in the amount of \$2,542.00 was payable on the first day of each month. A security deposit of \$1,150.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The landlord has not returned any portion of the tenant's security deposit. The landlord filed for dispute resolution on April 8, 2020, eight days after this tenancy ended.

The agent testified that a joint move in condition inspection report was completed with the tenant on July 1, 2014 and a joint move out condition inspection report was completed with the tenant on March 31, 2020. The move in and move out condition inspection reports were entered into evidence and were each signed by both parties. The move in condition inspection report is completely blank except one notation made under living room walls and trim which reads "one small hole on wall". The move out condition inspection report is completely blank except one notation under master bedroom floor/carpet which reads "carpet stain on corner".

The agent testified that where the condition inspection reports are left blank, with no notations, it means that the listed items were all in good condition. The agent testified that the tenant provided a forwarding address on March 31, 2020 on the move out condition inspection report.

The agent testified that the carpet was not clean when the tenant moved out so the landlord hired a professional carpet cleaner which cost \$150.00. A receipt for same was entered into evidence.

The agent testified that the carpet stain noted on the move out condition inspection report did not come out and so the carpet, which was at least 7-8 years old, required replacement. The agent testified that the new tenant has a carpet allergy and it was almost the same cost to get carpet as engineered hardwood, so the landlord elected to install engineered hardwood. A receipt for new engineered hardwood flooring in the amount of \$1,450.00 was entered into evidence.

The agent testified that when the move out condition inspection was completed, the landlord did not notice that several light bulbs were burnt out, so the report does not note burnt out lightbulbs. The agent testified that it cost \$146.11 to replace all the burnt-out lightbulbs at the subject rental property. A receipt for same was entered into evidence.

Analysis

Section 67 of the *Act* states:

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.

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 tenant 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.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

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. I accept the agent's testimony that the carpets required cleaning. The agent's testimony is supported by the contents of the move out condition inspection report. I find that the landlord is entitled to recover \$150.00 for carpet cleaning.

I accept the agent's testimony that the carpet stain did not come out and that the carpets required replacing. Photographs of the stained carpet were entered into evidence.

Residential Tenancy Guide #40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Residential Policy Guideline #16 states that 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. The landlord is not permitted to be put in a better position than had the damage not occurred. I find that the landlord is not permitted to have the tenant pay for the upgrade in materials from carpet to engineered hardwood.

Policy Guideline #40 states that the useful life for carpet is 10 years which means that there was only approximately 2-3 years of useful life left for the carpets of this unit. Had the landlord provided a quote for carpet replacement, the landlord would have been awarded a monetary award for 2-3/10ths of the cost of new carpet. However, the landlord did not enter into evidence a quote for new carpet but a quote for engineered hardwood, an upgraded material. I find that the landlord has not acted to minimize their loss and did not provide an estimate of the cost to replace the carpet with carpet, rather than engineered hardwood. Nonetheless, I find that the landlord has established that a loss was suffered. I therefore award the landlord nominal damages in the amount of \$200.00.

Section 21 of the Residential Tenancy Act Regulation states:

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.

All portions of the move out condition inspection report for bulbs were left blank. The agent testified that if an item was left blank, it meant that the item was in good condition. The agent testified that the burnt-out lightbulbs were missed when the move out condition inspection was completed. The only evidence to support the agent's submissions regarding burnt out light bulbs was a receipt for light bulbs. I find that the agent did not provide a preponderance of evidence to contradict the move out condition inspection report. I therefore dismiss the landlord's claim for lightbulbs.

As the landlord was successful in its monetary claim, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

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 \$450.00 from the tenant's security deposit. I order the landlord to return the remainder of the tenant's security deposit in the amount of \$700.00.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$700.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: August 13, 2020

Residential Tenancy Branch