



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit, for an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on April 13, 2022, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

Further on November 28, 2022, someone on the tenant's behalf contacted the Residential Tenancy Branch. The party indicated that they were the bankruptcy trustee for the tenant. The trustee wanted to have the hearing cancelled as they feel the hearing is not necessary as the tenant has confirmed the money owed and has been included in the bankruptcy claim.

The landlord stated they have not been contacted by any bankruptcy trustee.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on May 1, 2021. Rent in the amount of \$2,150.00 was payable on the first of each month. The tenant paid a security deposit of \$1,075.00 and a pet damage deposit of \$1,075.00.

The landlord testified that the tenant failed to pay rent for February and March 2022 and vacated the rental unit on March 21, 2022. The landlord seeks to recover unpaid rent in the amount of \$4,300.00.

The landlord testified that the tenant was fined by the strata for smoking in the rental unit, which was not paid, and the strata has some other charge backs. The landlord seeks to recover the amount of \$292.20.

The landlord testified that the carpets were damaged by the tenant's cat clawing at them and urinated on them. The landlord stated that the smell was overwhelming. The landlord stated the carpets were also damaged by cigarette burns. The landlord stated they the carpets were about 12 years old when the tenancy commenced; however, they were in good condition at the start of the tenancy. The landlord seeks to recover the amount of \$4,021.92. Filed in evidence show fraying carpet which appears to be from a cat, carpet burns and staining.

The landlord stated they are not presenting evidence for repainting, cleaning, and door repair.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

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.*

...

I accept the undisputed evidence that the tenant failed to pay rent for February and March 2022. I find the tenant breached the Act when they failed to pay rent. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$4,300.00**.

I accept the undisputed evidence that the tenant had failed to pay strata fines or fee that were charged back to the landlord. Therefore, I find the landlord is entitled to recover the strata fine and fees in the amount of **\$292.20**.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept the tenant caused damage to the carpets, the photographs show burn marks, stains, and some pulls from what appears a pet scratching. These were not noted in the move-in condition inspection report. I find the tenant breached section 37 of the Act, when they caused damage to the carpet, this is not normal wear and tear.

Under the Residential Tenancy Policy Guideline 40 carpets have a useful lifespan of 10 years. In this case, the carpets were 12 years old, which is past their useful life span. However, the carpets appear to be in reasonable condition, except for the damage caused by the neglect of the tenant.

As I do not have the actual receipt for replacing the carpet, and it would be unreasonable for me to grant the full cost of new carpets due to their age. I find it appropriate to grant the landlord a nominal amount to recognize the breach of the Act by the tenant. Therefore, I find the landlord is entitled to recover the amount of **\$500.00**.

I find that the landlord has established a total monetary claim of **\$5,192.20** comprised of the above described amount(s) and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,075.00** and pet damage deposit of **\$1,075.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$3,042.20**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: December 6 2022

Residential Tenancy Branch