



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Landlords pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. I accept the Landlord’s evidence that the Tenants residence was located through investigations and that each Tenant was served at that residence with the application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by registered mail on June 2, 0222 in accordance with Section 89 of the Act. I accept the postal evidence that the mail was delivered to both Tenants on June 3, 2022. The Landlords were given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord’s application sets out claims for rent, utilities and damages to the unit for a total amount of \$35,000.00. However the Landlord provided a monetary order worksheet detailing only damages to the unit for a total claim of \$30,308.90. The Landlord confirms being aware that the monetary limit for these proceedings is \$35,000.00. As the Landlord wishes to claim rent in addition to the damages of \$30,308.90, and as this rental claim is set out in the application, I find that the Landlord

may make a rental claim of no more than \$4,691.11.(35,000.00 - 30,308.90). As the additional claim for utilities exceeds the monetary limit, I dismiss this claim.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy under written agreement started on November 1, 2016 The Tenants moved out of the unit on March 9, 2022. Rent of \$2,000.00 was payable on the first day of each month. The Landlord collected a security deposit of \$1,000.00. The Tenants have not provided a forwarding address. The Landlord located the Tenants' residence through investigations. The Parties mutually conducted a move-in inspection with a report completed and left with the Tenants. The Landlord made two offers for a move-out inspection and the Tenants did not attend either of them.

In a previous decision dated February 25, 2022 the Landlord was found to have rent of \$5,760.33 owed to and including January 12, 2022 and that the Landlord received the amount of \$5,820.68 to and including January 12, 2022.

The Landlord states that the security deposit was dealt with in the previous decision.

The Landlord claims rent of \$4,691.11. The Landlord states that the Tenants left the unit very damaged requiring extensive repairs and that the unit was advertised and rented for a rental rate of \$3,500.00. The next tenancy started in May 2022.

The Landlord states that the Tenants left the carpets and flooring damaged and soiled to the extent that they required replacement. The Landlord removed the carpets on the main floor, lower floor and stairs. The Landlord refinished the existing hardwood flooring on the main floor and stairs and installed plank flooring on the lower level. The Landlord had asbestos removed on the risers and had the floors leveled in other rooms

to match the new plank flooring. The Landlord claims a total amount of \$17,203.20 for all the repairs to the flooring. The Landlord states that the carpets were new in 2011.

The Landlord states that the Tenants left all the walls in the unit with holes and stains. The Landlord claims \$10,605.50 for the repair costs. The Landlord provides an invoice for paint, tiling and carpentry for the vanity with costs only identified for the painting of the unit. The Landlord states that the unit was last painted in 2011.

The Landlord states that the Tenants left a large number of items behind. The Landlord provides photos. The Landlord claims \$2,500.20 as the removal costs and provides an invoice for this cost.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Policy Guideline #40 sets the useful life of carpets at 10 years and the useful life of paint at 4 years. Based on the Landlord's evidence of when the carpets were new I find that at the end of the tenancy the carpets were past their useful life. Costs to remove the carpets and replace with other flooring therefore remains with the Landlord and I dismiss the flooring repair costs.

As the invoice does not set out any repairs to drywall and sets out costs only for painting and as there are no photos of drywall damage or a move-out report noting drywall damage, I find that there were no costs incurred for drywall damage. Based on the Landlord's evidence that the unit had not been painted since 2011 I find that the paint on the walls was past its useful life at the end of the tenancy and any costs for painting the unit remains with the Landlord. I dismiss the claim for wall repair costs.

Given the evidence of items left behind, supported by photos, and as the Landlord provided the invoice I find that the Landlord has substantiated an entitlement to **\$2,500.20** for the removal costs.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 7 of the Act further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Based on the undisputed evidence that no rents were paid from the period January 13, 2022 to the date that the Tenants moved out of the unit on March 9, 2022 I find that the Landlord has substantiated rents owed in the amount of **\$1,225.69** for January 13 to 31, 2022 inclusive, **\$2,000.00** for February 2022 and **\$580.59** for March 1 to 9, 2022 inclusive for a total amount of **\$3,806.28**. These amounts are calculated on a per diem rate of \$64.51.

As the Landlord subsequently advertised the unit for \$3,500.00, I find that the Landlord failed to take reasonable steps to mitigate any rental losses beyond this time and I dismiss the claim for further rental monies. Given the finding in the previous decision that the Landlord received \$5,820.68 with rents owed to January 12, 2022 of only \$5,760.33 I find that the Landlord holds a rental credit of **\$60.35** and I apply to this credit to rent entitlement leaving **\$3,745.93** ($3,806.26 - 60.00$) owed for rental arrears. The Landlords total entitlement is ($3745.93 + 2,500.20$) **\$6,246.13**. As the Landlord's claims have met with some success I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total final entitlement of **\$6,346.13**.

As the previous decision does not deal with the security deposit and as there is no evidence that the security deposit was returned or otherwise dealt with, I find that the Landlord still has the security deposit in their possession. Deducting the security

deposit plus zero interest of **\$2,000.00** from the total final entitlement leaves **\$4,346.13** owed by the Tenants.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$2,000.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$4,346.13**. If necessary, 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 Act.

Dated: February 1, 2023

Residential Tenancy Branch