



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing was convened in response to an application made August 12, 2022 by the Landlord 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 compensation - Section 67;
3. A Monetary Order for damages to the unit - 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 Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other's evidence packages. The Tenant confirms receipt of the Landlord's amendment.

Preliminary Matter

The Landlord amended their application and the Tenant confirms receipt of the amendment. The Landlord confirms that they are now only seeking costs for unit cleaning, carpet cleaning and wall damage. The Landlord confirms that they are not seeking the other costs set out in the original application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The following are agreed or undisputed facts: The tenancy started on July 1, 2018 and the Tenants moved out on July 26, 2022. On April 8, 2018 the Landlord collected \$1,150.00 as a security deposit. Rent of \$2,334.00 was payable on the first day of each month. The Parties mutually conducted a move-in and move-out inspection with completed reports copied to the Tenants. The move-out inspection was conducted on July 26, 2022 and the Tenants did not agree with the move-out report. The Tenants provided their forwarding address to the Landlord as set out on the move-out report.

The Landlord states that the Tenants left two walls in a bedroom damaged and claims \$240.00 for the repair. The Landlord states that they are claiming the costs paid to an employee over and above their employment wages. The Landlord provides a ledger and confirms that there are no details on the ledger for the work done. The Landlord states that the paint on the walls was ripped off to the drywall and that the walls required putty and sanding. The Landlord is not claiming any paint costs. The Landlord confirms that they have not seen the damage on the walls themselves and only have the move-out report as supporting evidence. The Landlord states that the Tenants' photos of the walls support that repairs were required prior to the painting. The Tenant states that they are a professional carpenter and did the work to repair the ripped areas that were left from the removal of posters. The Tenant states that they puttied and sanded the wall to a smooth finish. The Tenant argues that their photos support this repair by the Tenants and that the damage is reasonable wear and tear given the length of the tenancy.

The Landlord states that the Tenants failed to leave the unit reasonably clean and claims the cleaning costs of \$656.25. The Landlord provides an invoice dated August 4, 2022 and points to the tenancy agreement that requires the Tenants to have the unit professionally cleaned at the end of the tenancy. The Tenant states that the unit was left reasonably clean and provides photos.

The Landlord states that the Tenants failed to leave the stair carpet clean. The Landlord claims the cleaning costs of **\$126.00** and provides an invoice dated September 12, 2022. The Tenants do not dispute this claim.

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. As the Tenants do not dispute the Landlord's claim for **\$126.00** to clean the carpets, I find that the Landlord is entitled to this claimed amount.

Given the Tenants' photos and direct evidence of the repairs done to the walls prior to the Landlord's painting, as the Tenants did not agree with the move-out report and as the Landlord has not provided any other supporting evidence, I find on a balance of probabilities that the Landlord has not substantiated that the walls required further remediation or repair prior to painting them. I dismiss the claim for \$240.00.

Section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. I consider that a requirement for professional cleaning is a requirement for a higher standard of cleaning than reasonable cleanliness. For this reason, I find that the requirement for professional cleaning is inconsistent with the Act and therefore unenforceable. Further, given the photos, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants failed to leave the unit reasonably clean as required under the Act. For these reasons I dismiss the cleaning costs claim of \$656.25.

As the Landlord's claims have met with minimal success, I find that the Landlord is only entitled to half the filing fee in the amount of **\$50.00** for a total entitlement of **\$176.00**.

Section 44(1)(d) of the Act provides that a tenancy ends if the tenant vacates the rental unit. Based on the undisputed evidence that the Tenants moved out of the unit on July 26, 2022 I find that the tenancy ended on that date.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the tenancy ended and the forwarding address was provided no later than July 26, 2022, I find that the Landlord had until August 10, 2022 to make its application to claim against the security deposit. As the Landlord's application was made on August 12, 2022, I find that the Landlord made the application past the allowed time and the Landlord must now pay the Tenants **\$2,300.00** as double the original security deposit of \$1,150.00.

The interest payable on the original security deposit, calculated from the date the deposit was paid to the date of this Decision, is **\$8.00** for a total payable of **\$2,308.00**. Deducting the Landlord's entitlement of **\$176.00** from this amount leaves **\$2,132.00** to be returned to the Tenants forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,132.00**. 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: May 10, 2023

Residential Tenancy Branch