



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for a monetary order for compensation under the Act and the tenancy agreement, for compensation for damages to or cleaning of the rental unit, and to recover the filing fee for the Application.

Only one Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified the Tenants were served with the Notice of Hearing and Application by registered mail, sent on May 4, 2012, to the respective forwarding addresses provided by the Tenants. Despite this, the Tenants did not appear at the hearing. I find the Tenants were duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the Landlords entitled to monetary compensation from the Tenants?

Background and Evidence

The Landlords and Tenants entered into a written tenancy agreement for a fixed term of one year and 15 days, which was to end August 31, 2012. The monthly rent was \$1,400.00.

The Landlord provided affirmed testimony and evidence that the Tenants were ordered in a previous hearing, before a different Dispute Resolution Officer, to vacate the rental

unit due to unpaid rent. I also note that rent up to November 2011 and the security deposit were dealt with in the previous hearing.

The Tenants vacated the property on or about November 23, 2011, however, the Landlords allege they have incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenants.

The Landlords further allege that they suffered a loss of rent for four and a half months, due to the condition it was left in, and because the Tenants breached a fixed term tenancy agreement.

The Landlords entered the rental unit in late November 2011, and allege they found the rental unit in a very dirty and damaged state.

The Landlords had a restoration company provide an estimate of the work required to return the rental unit to a state where it could be rented again. The company had a project manager inspect the property on November 30, 2011, and provided the Landlords with a report, which includes the following statements:

“The previous tenants have left the suite in a state of very poor condition ‘dirty/unsanitary’, although there was no direct evidence of vandalism or forced damages to the finishes.

ODOR – There was a very strong odor of marijuana in the suite. This odor would result in having all walls, doors, windows, cabinets, blinds, cleaned.

CARPET – There was a strong odor of marijuana and urine (evidence of pet urine/feces on all carpets). Although a test cleaning of carpets would be a good approach to start, we have found in our experience that pet urine odor is strongest in the underpad, which should be removed and replaced.”

[Reproduced as written.]

The Landlord testified he rented a carpet cleaner and tried to clean the carpets as suggested by the restoration company. He testified that after the cleaning the carpet still smelled very bad and was ruined. He testified the carpet was about two years old when the Tenants moved in. The Landlords replaced the carpet with laminate floors and have included an invoice for \$6,290.69 for this work.

The Landlord testified that the smell in the rental unit was so strong before it was cleaned and repainted, that he had to wear a respirator when he was in the suite.

The Landlord testified that due to the strong smell of marijuana smoke, the greasy unclean condition of the walls, and the holes that the Tenants left in them, the Landlords and the painting company had to clean, repair and repaint the walls. The Landlords included an invoice for repairs and painting in the amount of \$728.00. The Landlords also claim 20 hours of cleaning at \$20.00 per hour, for a total of \$400.00. The Landlord testified that the rental unit had been painted two years prior to this tenancy.

The Landlords had to replace a door key fob at a cost of \$70.00, and they have included a receipt for this. Furthermore, the Landlords had to take garbage and other debris left behind by the Tenants to the landfill and incurred an expense of \$26.00 for two trips.

The Landlord testified that they worked on cleaning and repairing the rental unit throughout December of 2011 and began advertising the unit for rent again in January of 2012. The Landlords continued to advertise the rental unit and had to drop the price of the rent by \$50.00 per month, prior to having it re-rented for April 1, 2012.

The Landlords claim as follows:

a.	Loss of rent for 4 ½ months at \$1,400.00 per month	\$6,300.00
c.	Cleaning of unit 20 hours @ \$20.00 per hour	\$400.00
d.	Filing fee	\$100.00
	Total claimed	\$13,993.70

Analysis

Based on the uncontradicted testimony, evidence, photographs, and on a balance of probabilities, I find that the Tenants breached section 26 of the Act by failing to pay rent when due, breached section 37 of the Act by failing to return the rental unit to the Landlords in a reasonably clean and undamaged state, and breached section 45 of the Act by ending the fixed term tenancy agreement before the term was finished.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], 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.

I find that due to the condition the rental unit was left in by the Tenants, the Landlords suffered a loss of rent for one month while they cleaned and repaired the rental unit.

Furthermore, I find the Tenants were not able to end the fixed term tenancy without authority to do so under the Act. I find the Tenants breached section 45 of the Act by doing this. I find the Landlords mitigated their losses under the one year and 15 days term tenancy agreement by making repairs, advertising the rental unit and eventually lowering the rental rate. I allow the Landlords a loss of rent under the tenancy agreement for three and a half months, to the time it was re-rented in April of 2012. Therefore, I allow the Landlords **\$6,300.00** for loss of rent claims.

I do not allow the Landlords' claims for the replacement of the carpets with laminate floors. The restoration company advised the Landlords to first clean the carpets and if that was not successful in removing the pet urine and marijuana odour, to then replace the carpet underlay. I find the Landlords had insufficient evidence to prove that the carpets had been ruined to the point they had to be completely replaced, or that replacing the underlay would not have been sufficient. This portion of their claim is dismissed without leave to reapply.

I find the Tenants did not clean the unit, remove all their property and garbage, or return all property to the Landlords, and this has caused losses. I allow the Landlords **\$400.00** for cleaning, **\$26.00** for removal of garbage, **\$70.00** for the key fob, and **\$62.48** for cleaning supplies and materials.

In the normal course of a tenancy, the Landlords are required to paint the interior rental unit walls. However, in this instance, I find the Tenants damaged the walls beyond reasonable wear and tear, and smoked in the rental unit, and are responsible for the Landlords' losses for repairs and painting. I allow the Landlords the **\$728.00** cost to repair and repaint the walls in the rental unit.

I find that the Landlords have established a total monetary claim of **\$7,686.48** comprised of the above described amounts and the fee paid for this application. I grant and issue the Landlords a monetary order in those terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants breached the term tenancy agreement, failed to clean and repair the rental unit as required under the Act, and caused the Landlords to suffer a loss of rent for four and a half months. The Landlords are granted a monetary order in the amount of **\$7,686.48** for their losses caused by the Tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 29, 2012.

Residential Tenancy Branch